

REVENUE LAWS

OF THE

STATE OF CALIFORNIA

IN FORCE ON THE FIRST
DAY OF JANUARY, 1918

And Citations From Decisions of the Supreme
and Appellate Courts Affecting
Revenue Laws

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Prepared for
THE USE OF ASSESSORS, COLLECTORS, AUDITORS AND STATE
AND COUNTY OFFICERS



CALIFORNIA STATE PRINTING OFFICE

SACRAMENTO

1917



“I pledge allegiance to my Flag and to
the Republic for which it stands—one nation,
indivisible, with liberty and justice for all.”



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By T. M. EBY
Secretary, State Board of Equalization



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PREFACE.

This volume is compiled by authority of the State Board of Equalization. All the general laws relating to taxation for state and county purposes are given herein. There has also been added the new state license tax, together with the decisions of the higher courts affecting the same. The inheritance tax law is given complete with an epitome of court decisions affecting the same. The annotations of the decisions of the higher courts of California have been continued and brought down to date. The searcher will find many extracts from decisions in cases which are not strictly tax cases; but such are added for the reason that principles are involved and decided which would apply to tax cases. As said in the former edition, no attempt has been made to gather extracts from decisions on the admissibility of evidence, oral or documentary, in tax cases, nor the effect of such admission or rejection, for it is obvious that the admission or rejection of evidence in all cases depends much upon the pleadings and the conduct of the case in court. The several sections relating to taxation have been freed from obsolete and redundant matter by legislative enactment; the new commuted state tax law has been codified, so that our revenue laws present a better appearance today than in many years past.

Sacramento, November 15, 1917.

T. M. EBY,
Secretary, State Board of Equalization.

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REVENUE LAWS

OF THE

STATE OF CALIFORNIA

Abstracts From the Constitution, Relating to Revenues.

ARTICLE IX.

SECTION 10. The trusts and estates created for the founding, endowment, Leland Stanford Jr. University trust confirmed. and maintenance of the Leland Stanford Junior University, under and in accordance with "An act to advance learning," etc., approved March ninth, eighteen hundred and eighty-five, by the endowment grant executed by Leland Stanford and Jane Lathrop Stanford on the eleventh day of November, A. D. eighteen hundred and eighty-five, and recorded in liber eighty-three of deeds, at page twenty-three *et seq.*, records of Santa Clara county, and by the amendments of such grant, and by gifts, grants, bequests, and devises supplementary thereto, and by confirmatory grants, are permitted, approved and confirmed. The board of trustees of the Leland Stanford Junior University, as such, or in the name of the institution, or by other intelligible designation of the trustees or of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest, for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests, and devises supplementary thereto. The legislature, by special act, may grant to the trustees of the Leland Stanford Junior University corporate powers and privileges, but it shall not thereby alter their tenure, or limit their powers or obligations as trustees. All property now or hereafter held in trust for the founding, maintenance, or benefit of the Leland Stanford Junior University, or of any department thereof, may be exempted by special act from state taxation, and all personal property so held, the Palo Alto farm as described in the endowment grant of the trustees of the university, and all other real property so held and used by the university for educational purposes exclusively, may be similarly exempted from county and municipal taxation; *provided*, that residents of California shall be charged no fees for tuition unless such fees be authorized by act of the legislature. [New section; ratified November 6, 1900.]

University may receive real and personal property, by gift, devise, etc.

Legislature may grant corporate powers.

Certain property of the university may be exempted from taxation.

SEC. 11. All property now or hereafter belonging to "The California School of Mechanical Arts," an institution founded and endowed by the late James Lick to educate males and females in the practical arts of life, and incorporated under the laws of the State of California, November twenty-third, eighteen hundred and eighty-five, having its school buildings located in the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section; ratified November 6, 1900.]

Property of "The California School of Mechanical Arts" exempted from taxation.

SEC. 12. All property now or hereafter belonging to the "California Academy of Sciences," an institution for the advancement of science and maintenance of a free museum, and chiefly endowed by the late James Lick, and incorporated under the laws of the State of California, January sixteenth, eighteen hundred and seventy-one, having its buildings located in

Property of the "Academy of Sciences" exempted from taxation.

the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section; ratified November 8, 1904.]

Property of the "Cogswell Polytechnical College" exempted from taxation.

SEC. 13. All property now or hereafter belonging to the Cogswell Polytechnical College, an institution for the advancement of learning, incorporated under the laws of the State of California, and having its buildings located in the city and county of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the governor. The legislature may modify, suspend, and revive at will the exemption from taxation herein given. [New section; ratified November 6, 1906.]

ARTICLE XI.

Legislature not to impose taxes in counties and municipalities.

Home rule in county and municipal affairs.

SECTION 12. The legislature shall have no power to impose taxes upon counties, cities, towns or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever, except that the legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this state. [Amendment ratified November 3, 1914.]

ARTICLE XIII.

All property to be taxed.

Word "property" includes what.

Mortgage, deed of trust, etc., not taxable.

Certain property exempted.

Municipal property situate in other jurisdictions.

SÉCTION 1. All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; *provided*, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; *and further provided*, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within this state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; *provided*, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county, or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and

adjustment by the state board of equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits or debts due to bona fide residents of this state. [Amendment ratified November 3, 1914.]

SEC. 1 $\frac{1}{4}$. The property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom; or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and property to the amount of one thousand dollars of the widow resident in this state, or if there be no such widow, of the widowed mother resident in this state, of every person who has so served and has died either during his term of service or after receiving honorable discharge from said service; and the property to the amount of one thousand dollars of pensioned widows, fathers, and mothers, resident in this state, of soldiers, sailors, and marines who served in the army, navy, or marine corps, or revenue marine service of the United States, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of five thousand dollars or more, or where the wife of such soldier or sailor owns property of the value of five thousand dollars or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of this state. [New section; ratified October 10, 1911.]

SEC. 1 $\frac{1}{2}$. All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship shall be free from taxation; *provided*, that no building so used which may be rented for religious purposes and rent received by the owner therefor, shall be exempt from taxation. [New section; ratified November 6, 1900.]

SEC. 1 $\frac{3}{4}$. All bond hereafter issued by the State of California, or by any county, city and county, municipal corporation, or district (including school, reclamation, and irrigation districts) within said state, shall be free and exempt from taxation. [New section; ratified November 4, 1902.]

SEC. 1a. Any educational institution of collegiate grade, within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purposes of education. [New section; ratified November 3, 1914.]

SEC. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States government.

SEC. 4. All vessels of more than fifty tons burden registered at any port in this state and engaged in the transportation of freight or passengers, shall be exempt from taxation except for state purposes, until and including the first day of January, nineteen hundred thirty-five. [New section; ratified November 3, 1914.]

SEC. 5. [Repealed November 6, 1906.]

Assessment of credits and debts.

Property exempted for each soldier, sailor, etc.

Church property exempted from taxation.

Bonds exempted from taxation.

Colleges exempted.

Assessment of land and improvements thereon.

Lands to be assessed by sections and fractions of sections.

Shipping exempted.

No surrender of power to tax.

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party.

Installments.

SEC. 7. The legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

Taxpayers required to deliver annual statement to assessor.

SEC. 8. The legislature shall by law require each taxpayer in this state to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March.

State board of equalization, how elected and constituted.

SEC. 9. The state board of equalization, consisting of one member from each congressional district in this state, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for the purposes of taxation. The controller of state shall be ex officio a member of the board. The boards of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no board of equalization shall raise any mortgage, deed of trust, contract or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present state board of equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The legislature shall have power to redistrict the state into four districts, as nearly equal in population as practicable, and to provide for the election of members of said board of equalization. [Amendment ratified November 4, 1884.]

Boards of supervisors to constitute county boards of equalization.

After notice, power to increase or lower entire assessment roll.

Mortgages, deeds of trust, etc., not to be raised above face value.

Districting state.

Property to be assessed, where.

\$100 personal property exempted from taxation.

Income taxes may be collected.

Poll and head taxes.

Exemption of fruit trees and vines.

SEC. 10. All property, except as otherwise in this constitution provided, shall be assessed in the county, city, city and county, town or township, or district in which it is situated, in the manner prescribed by law. [Amendment ratified November 8, 1910.]

SEC. 10 $\frac{1}{2}$. The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation. [New section; ratified November 8, 1904.]

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this state, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

SEC. 12. No poll tax or head tax for any purpose whatsoever shall be levied or collected in the State of California. [New section; ratified November 3, 1914.]

SEC. 12 $\frac{3}{4}$. Fruit and nut-bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such trees and grapevines to taxation. [New section; ratified November 6, 1894.]

SEC. 14. Taxes levied, assessed and collected as hereinafter provided Subjects
upon railroads, including street railways, whether operated in one or taxed
more counties; sleeping car, dining car, drawing-room car and palace exclusively
car companies, refrigerator, oil, stock, fruit, and other car-loaning and for state
other car companies operating upon railroads in this state; companies purposes.
doing express business on any railroad, steamboat, vessel or stage line
in this state; telegraph companies; telephone companies; companies en-
gaged in the transmission or sale of gas or electricity; insurance com-
panies; banks, banking associations, savings and loan societies, and trust
companies; and taxes upon all franchises of every kind and nature, shall
be entirely and exclusively for state purposes, and shall be levied, assessed
and collected in the manner hereinafter provided. The word "companies" "Company"
as used in this section shall include persons, partnerships, joint-stock defined.
associations, companies, and corporations.

(a) All railroad companies, including street railways, whether operated Public
in one or more counties; all sleeping car, dining car, drawing-room car, service
and palace car companies, all refrigerator, oil, stock, fruit and other car cor-
loaning and other car companies, operating upon the railroads in this porations,
state; all companies doing express business on any railroad, steamboat, how
vessel or stage line in this state; all telegraph and telephone companies;
and all companies engaged in the transmission or sale of gas or electricity
shall annually pay to the state a tax upon their franchises, roadways,
roadbeds, rails, rolling stock, poles, wires, pipes, canals, conduits, rights
of way, and other property, or any part thereof used exclusively in the
operation of their business in this state, computed as follows: Said tax
shall be equal to the percentages hereinafter fixed upon the gross receipts
from operation of such companies and each thereof within this state.
When such companies are operating partly within and partly without this Gross
state, the gross receipts within this state shall be deemed to be all re-
ceipts on business beginning and ending within this state, and a propor-
tion, based upon the proportion of the mileage within this state to the
entire mileage over which such business is done, of receipts on all busi-
ness passing through, into, or out of this state.

The percentages above mentioned shall be as follows: On all railroad Percentages
companies, including street railways, four per cent; on all sleeping car, on gross
dining car, drawing-room car, palace car companies, refrigerator, oil, receipts.
stock, fruit, and other car-loaning and other car companies, three per
cent; on all companies doing express business on any railroad, steamboat,
vessel or stage line, two per cent; on all telegraph and telephone com-
panies, three and one-half per cent; on all companies engaged in the
transmission or sale of gas or electricity, four per cent. Such taxes shall In lieu of
be in lieu of all other taxes and licenses, state, county and municipal, other taxes
and upon the property above enumerated of such companies except as other- and
wise in this section provided; provided, that nothing herein shall be con- licenses.
strued to release any such company from the payment of any amount Exception.
agreed to be paid or required by law to be paid for any special privilege
or franchise granted by any of the municipal authorities of this state.

(b) Every insurance company or association doing business in this Tax on
state shall annually pay to the state a tax of one and one-half per cent insurance
upon the amount of the gross premiums received upon its business done companies.
in this state, less return premiums and reinsurance in companies or
associations authorized to do business in this state; provided, that there Specific
shall be deducted from said one and one-half per cent upon the gross deductions.
premiums the amount of any county and municipal taxes paid by such
companies on real estate owned by them in this state. This tax shall
be in lieu of all other taxes and licenses, state, county and municipal,
upon the property of such companies, except county and municipal taxes

Retaliatory laws.

on real estate, and except as otherwise in this section provided; *provided*, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the legislature upon insurance companies of such other state or country doing business in this state.

Tax on state and national banks.

(c) The shares of capital stock of all banks, organized under the laws of this state, or of the United States, or of any other state and located in this state, shall be assessed and taxed to the owners or holders thereof by the state board of equalization, in the manner to be prescribed by law, in the city or town where the bank is located and not elsewhere. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual assets of such bank. This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such shares of stock and upon the property of such banks, except county and municipal taxes on real estate and except as otherwise in this section provided. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value as assessed for county taxes, of any real estate, other than mortgage interest therein, owned by such bank and taxed for county purposes. The banks shall be liable to the state for this tax and the same shall be paid to the state by them on behalf of the stockholders in the manner and at the time prescribed by law, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid.

Deduction of real estate.

Liability for tax.

Tax on unincorporated banks and on branches and agencies of foreign banks.

Deduction of real estate.

In lieu of other taxes and licenses.

The moneyed capital, reserve, surplus, undivided profits and all other property belonging to unincorporated banks or bankers of this state, or held by any bank located in this state which has no shares of capital stock, or employed in this state by any branches, agencies, or other representatives of any banks doing business outside of the State of California, shall be likewise assessed and taxed to such banks or bankers by the said board of equalization, in the manner to be provided by law and taxed at the same rate that is levied upon the shares of capital stock of incorporated banks, as provided in the first paragraph of this subdivision. The value of said property shall be determined by taking the entire property invested in such business, together with all the reserve, surplus, and undivided profits, at their full cash value, and deducting therefrom the value as assessed for county taxes of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of the banks and bankers, mentioned in this paragraph, except county and municipal taxes on real estate and except as otherwise in this section provided. It is the intention of this paragraph that all moneyed capital and property of the banks and bankers mentioned in this paragraph shall be assessed and taxed at the same rate as an incorporated bank, provided for in the first para-

graph of this subdivision. In determining the value of the moneyed capital and property of the banks and bankers mentioned in this subdivision, the said state board of equalization shall include and assess to such banks all property and everything of value owned or held by them, which go to make up the value of the capital stock of such banks and bankers, if the same were incorporated and had shares of capital stock.

The word "banks" as used in this subdivision shall include banking associations, savings and loan societies and trust companies, but shall not include building and loan associations.

(d) All franchises, other than those expressly provided for in this section, shall be assessed at their actual cash value, in the manner to be provided by law, and shall be taxed at the rate of one per centum each year, and the taxes collected thereon shall be exclusively for the benefit of the state.

(e) Out of the revenues from the taxes provided for in this section, together with all other state revenues, there shall be first set apart the moneys to be applied by the state to the support of the public school system and the state university. In the event that the above named revenues are at any time deemed insufficient to meet the annual expenditures of the state, including the above named expenditures for educational purposes, there may be levied, in the manner to be provided by law, a tax, for state purposes, on all the property in the state including the classes of property enumerated in this section, sufficient to meet the deficiency. All property enumerated in subdivisions *a*, *b*, and *d* of this section shall be subject to taxation, in the manner provided by law, to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, before the adoption of this section. The taxes so paid for principal and interest on such bonded indebtedness shall be deducted from the total amount paid in taxes for state purposes.

(f) All the provisions of this section shall be self-executing and the legislature shall pass all laws necessary to carry this section into effect, and shall provide for a valuation and assessment of the property enumerated in this section, and shall prescribe the duties of the state board of equalization and any other officers in connection with the administration thereof. The rates of taxation fixed in this section shall remain in force until changed by the legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof. The taxes herein provided for shall become a lien on the first Monday in March of each year after the adoption of this section and shall become due and payable on the first Monday in July thereafter. The gross receipts and gross premiums herein mentioned shall be computed for the year ending the thirty-first day of December prior to the levy of such taxes and the value of any property mentioned herein shall be fixed as of the first Monday in March. Nothing herein contained shall affect any tax levied or assessed prior to the adoption of this section; and all laws in relation to such taxes in force at the time of the adoption of this section shall remain in force until changed by the legislature. Until the year 1918 the state shall reimburse any and all counties which sustain loss of revenue by the withdrawal of railroad property from county taxation for the net loss in county revenue occasioned by the withdrawal of railroad property from county taxation. The legislature shall provide for reimbursement from the general funds of any county to districts therein where loss is occasioned in such districts by the withdrawal from local taxation of property taxed for state purposes only.

Method of determining value.

"Banks" defined.

Tax on franchises.

Distribution of receipts.

Deficiency in state revenues.

Bonded debts.

Duty of legislature.

Change of rates.

Lien of taxes.

Period for gross receipts.

Proviso.

Period for gross receipts.

Reimbursement of counties and districts.

No injunction shall ever issue in any suit, action or proceeding in any court against this state or against any officer thereof to prevent or enjoin the collection of any tax levied under the provisions of this section; but after payment action may be maintained to recover any tax illegally collected in such manner and at such time as may now or hereafter be provided by law. [New section; ratified November 8, 1910.]

NOTE.—The percentage tax rates fixed in the foregoing section 14 were changed by the legislature. See chapter 6, laws of 1913; chapter 2, laws of 1915; and chapter 214, laws of 1917.

STATUTES ENACTED TO CARRY INTO EFFECT CERTAIN
PROVISIONS OF SECTION 14 OF ARTICLE XIII
OF THE CONSTITUTION

GENERAL TAX LEVY BILL.

CHAPTER 316.

An act to provide for the assessment, levy and collection of taxes for the support of the state government for the sixty-ninth and seventieth fiscal years.

[Approved May 14, 1917.]

The people of the State of California do enact as follows:

SECTION 1. The state board of equalization shall, between the first Monday in March and the first Monday in July in the year one thousand nine hundred seventeen, for the support of the state government assess and levy taxes upon the property in the manner and upon the rates of taxation as provided for in the subdivisions *a*, *b*, *c*, and *d*, of section fourteen of article thirteen of the constitution of the State of California, or if any rate of taxation shall have been changed by the legislature pursuant to subdivision *f* of said section and article, then upon such rate of taxation as so changed and fixed, for the purpose of raising the sum of twenty million four hundred sixty thousand dollars for annual expenditure for the support of the state government for the sixty-ninth fiscal year, and in the event that the taxes so assessed and levied, together with all available revenues other than those revenues required by law to be used for special uses, shall not raise said sum of twenty million four hundred sixty thousand dollars, then said above named revenues shall be deemed insufficient to meet the annual expenditures of the state for the sixty-ninth fiscal year, which deficiency is hereby declared to be the difference between the amount of taxes assessed and levied upon the property and in the manner and upon the rates of taxation hereinbefore specified, together with all other state revenues, other than those revenues required by law to be used for special uses, and said sum of twenty million four hundred sixty thousand dollars, then said state board of equalization, in accordance with the provisions of subdivision *c* of said section fourteen of article thirteen of the constitution of the State of California, at the time provided in section three thousand six hundred ninety-six of the Political Code, shall fix such an ad valorem rate of taxation for the said sixty-ninth fiscal year upon each one hundred dollars in value of taxable property, upon all the property in the State of California not exempt from taxation under the law and subject to taxation for state purposes on the seventh day of November in the year one thousand nine hundred ten, as, after allowing five per cent for delinquencies, will raise for said sixty-ninth fiscal year the amount of said deficiency.

SEC. 2. The state board of equalization shall, between the first Monday in March and the first Monday in July in the year one thousand nine hundred eighteen, for the support of the state government, assess and levy taxes upon the property in the manner and upon the rates of taxation as provided for in subdivisions *a*, *b*, *c*, and *d* of section fourteen of article thirteen of the constitution of the State of California, or if any rate of taxation shall have been changed by the legislature pursuant to subdivision *f* of said section and article, then upon such rate of taxation as so changed and fixed by the laws now in force, for the purpose of raising the sum of twenty-one million one hundred forty thousand dollars for annual expenditure for the support of the state government for

the seventieth fiscal year; and in the event that the taxes so assessed and levied, together with all available revenues other than those revenues required by law to be used for special uses, shall not raise said sum of twenty-one million one hundred forty thousand dollars, then said above named revenues shall be deemed insufficient to meet the annual expenditures of the state for the seventieth fiscal year, which deficiency is hereby declared to be the difference between the amount of taxes assessed and levied upon the property and in the manner and upon the rates of taxation as hereinbefore specified, together with all other state revenues, other than those revenues required by law to be used for special uses, and said sum of twenty-one million one hundred forty thousand dollars, then said state board of equalization, in accordance with the provisions of subdivision *e* of said section fourteen of article thirteen of the constitution of the State of California, at the time provided in section three thousand six hundred ninety-six of the Political Code, shall fix such an ad valorem rate of taxation for said seventieth fiscal year upon each one hundred dollars in value of taxable property, upon all the property of the State of California not exempt from taxation under the law and subject to taxation for state purposes on the seventh day of November in the year one thousand nine hundred ten, as, after allowing five per cent for delinquencies, will raise for said seventieth fiscal year, the amount of said deficiency.

SEC. 3. Any tax so levied and collected to meet a deficiency in state revenues for either of said fiscal years shall be assessed, levied and collected on all property in the state, not exempt from taxation, including the classes of property enumerated in section fourteen of article thirteen of the constitution of this state, under the provisions of the Political Code relating to the assessment, levy and collection of state and county taxes as said provisions were in force on the seventh day of November in the year one thousand nine hundred ten.

SEC. 4. This act, inasmuch as it provides for a tax levy for the usual current expenses of the state shall, under the provisions of section one of article four of the constitution of the State of California, take effect immediately.

REIMBURSEMENT OF COUNTIES.

CHAPTER 601.

An act to provide for the reimbursement of counties in this state, which sustain net loss of revenue by the withdrawal of railroad property from county taxation, under the provisions of section fourteen of article thirteen of the constitution of this state.

[Approved April 26, 1911.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for each fiscal year hereafter to and including the fiscal year ending June thirtieth, one thousand nine hundred eighteen, the sum of one hundred and thirty thousand eight hundred and ninety-seven dollars for the purpose of reimbursement of counties in this state which sustain net loss of revenue by the withdrawal of railroad property from county taxation under the provisions of section fourteen of article thirteen of the constitution of this state, and as provided in section thirty of an act of the thirty-ninth session of the legislature entitled, "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation."

SEC. 2. The counties which sustain net loss of revenue, by the withdrawal of railroad property from county taxation under the provisions of section fourteen of article thirteen of the constitution of this state are the counties of Imperial, Madera, Nevada, Placer, San Bernardino, Siskiyou, and Yuba, and the amount of net loss of revenue which said counties sustain by the withdrawal of railroad property from county taxation is as follows: Imperial \$21,054; Madera \$2,478; Nevada \$5,861; Placer \$36,304; San Bernardino \$52,987; Siskiyou \$5,045; Yuba \$7,172.

SEC. 3. The controller is hereby directed to draw his warrant in favor of each of said counties for the amount of net loss of revenue to said counties respectively, in equal installments at the time and in the manner provided for settlement between treasurers of the counties or cities and counties and the state controller, by section three thousand eight hundred and sixty-six of the Political Code and as is required by the provisions of section thirty of an act of the thirty-ninth session of the legislature entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation," and the state treasurer is directed to pay the same.

SEC. 4. This act shall take effect immediately.

Appropriation; reimbursement of counties for loss of certain revenue.

Counties and amounts payable.

Manner of payment.

REIMBURSEMENT FOR BOND TAXES.

CHAPTER 533.

An act appropriating money for the purpose of payment of that part of the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, on the eighth day of November in the year one thousand nine hundred and ten which is provided in section fourteen of article thirteen of the constitution of this state and as provided in an act of the thirty-ninth session of the legislature entitled, "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation."

[Approved June 7, 1913.]

The people of the State of California do enact as follows:

Cities,
counties,
etc., reim-
bursement
for bond
taxes.

SECTION 1. There is hereby appropriated out of any money not otherwise appropriated the sum of one million four hundred thousand dollars for the purpose of payment of that part of the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, on the eighth day of November in the year one thousand nine hundred and ten, as is provided in section fourteen of article thirteen of the constitution of this state and as provided in an act of the thirty-ninth session of the legislature entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation," and of said moneys hereby appropriated the sum of seven hundred thousand dollars shall become available July 1, 1913, and the sum of seven hundred thousand dollars shall become available July 1, 1914.

Duty of
controller
and
treasurer.

SEC. 2. The state controller is hereby directed to draw his warrant for said sum, or so much thereof as may be necessary for said fiscal years, in the manner and at the times and as is required by the provisions or section twenty-nine of an act of the thirty-ninth session of the legislature entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation," and the state treasurer is hereby directed to pay the same.

NOTE.—This is the latest enactment.

Shares of
stock in
corporations
not taxable.

3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent. The assessment and taxation of such shares, and also of all corporate property would be double taxation. All property belonging to corporations shall be assessed and taxed, in the manner provided by law; but no assessment shall be made of shares of stock in any corporation except as prescribed in the constitution of this state and the laws enacted pursuant to such provisions of the constitution. (1917.)

History: Added March 7, 1881 (Statutes 1881, p. 56); took effect immediately. Amended March 14, 1899 (Statutes 1899, p. 96); became a law March 14, 1899, without approval of governor; took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3609. Repealed. (1917.)

History: Added by act which became a law March 14, 1899 (Statutes 1899, p. 97), without approval of governor; took effect immediately. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3610. Repealed. (1917.)

History: Added by act which became a law March 14, 1899 (Statutes 1899, p. 97), without approval of governor; took effect immediately. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Church
buildings
and grounds
exempted
from
taxation.

3611. All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship shall be free from taxation; *provided*, that no building so used which may be rented for religious purposes and rent received by the owner therefor shall be exempt from taxation. That any person claiming property to be exempt from taxation under this section shall make a return thereof to the assessor annually, the same as property is listed for taxation, and shall accompany the same by an affidavit showing that the building is used solely and exclusively for religious worship, and that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building, and that the same is not rented for religious purposes and rent received by the owner therefor. (1903.)

Annual
return to
be made to
assessor.

History: Added February 12, 1903 (Statutes 1903, p. 21); took effect immediately.

Duty of
state
board of
equalization.

3612. 1. The state board of equalization shall prescribe all procedure, affidavits and forms required to carry into effect the tax exemption on property specified in section one and one-fourth of article XIII of the constitution.

Duty of
claimant for
exemption.

2. Every person entitled to or applying for the exemption from taxation specified in said provision of the constitution shall appear before the assessor or deputy assessor and shall give all information required and answer all questions contained in the forms and affidavit prescribed by said board, and thereupon shall subscribe and swear to the same before such assessor or deputy. Any false statement made or sworn to in such affidavit shall constitute and be punishable as perjury.

3. Any assessor may, in his discretion, require other or additional proof of the facts stated by such affiant before allowing the exemption claimed. Failure upon the part of any person entitled to such exemption to make affidavit or furnish evidence as required by this section between the first Monday in March and the first Monday in July of each year shall be deemed and treated as a waiver of such exemption by such person.

4. The following are recognized as wars within the intent and meaning of said section of the constitution:

- a. Revolutionary war—April 19, 1775-January 14, 1784;
- b. Second war with England—June 18, 1812-February 17, 1815;
- c. Black Hawk war—April 6, 1832-August 2, 1832;
- d. War with Mexico—April 24, 1846-May 30, 1848;
- e. Civil war—April 19, 1861-August 20, 1866;
- f. War with Spain—April 21, 1898-April 11, 1899;
- g. War in Philippines—April 11, 1899-July 4, 1902;
- h. Campaign against the Rogue River, Yakima, Nez Perce and Snake Indians in Oregon and Washington, 1855-1856;
- i. Campaign against the Indians in southern Oregon and Idaho and northern part of California and Nevada, 1865-1868;
- j. Campaign against the Cheyennes, Arapahoes, Kiowas, and Comanches, in Kansas, Colorado and Indian Territory, 1867, 1868 and 1869;
- k. Modoc war, 1872 and 1873;
- l. Campaign against the Apaches of Arizona, 1873;
- m. Campaign against the Kiowas, Comanches and Cheyennes, in Kansas, Colorado, Texas, Indian Territory and New Mexico, 1874 and 1875;
- n. Campaign against the Northern Cheyennes and Sioux, 1876 and 1877;
- o. Nez Perce war, 1877;
- p. Bannock war, 1878;
- q. Campaign against the Northern Cheyennes, 1878 and 1879;
- r. Campaign against the Ute Indians in Colorado and Utah, September, 1879, to November, 1880;
- s. Campaign against the Apache Indians in Arizona, 1885 and 1886;
- t. Campaign against the Sioux Indians in South Dakota, November, 1890, to January, 1891.

History: Added May 4, 1915 (Statutes 1915, p. 351). In effect August 8, 1915.

3613. 1. Any educational institution of collegiate grade, within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purposes of education.

2. An educational institution of collegiate grade is deemed and defined to be an institution incorporated as a college or seminary of learning under the laws of this state, which requires for regular admission the completion of a four year high school course or its equivalent, and confers upon its graduates at least one academic or professional degree, based upon a course of at least four years in liberal arts and sciences, or upon a course of at least three years in professional studies, including law, theology, education, medicine, dentistry, engineering, veterinary medicine, pharmacy, architecture, fine arts, commerce or journalism.

3. An educational institution not conducted for profit is deemed and defined to be an institution incorporated as a college or seminary of learning under the laws of this state conducted exclusively for scientific

Additional proof.
Failure to apply annually is waiver.

Recognized wars.

What property exempted.

What constitutes "collegiate grade."

Nonprofit institution defined.

or educational purposes, no part of the net income of which inures to the benefit of any private stockholder, member or individual.

Grounds exempted and method of selection.

4. The grounds of an educational institution exempt from taxation under the provisions of section one *a* of article thirteen of the constitution, when the grounds of such educational institution within which its buildings are located exceed one hundred acres in area, shall be determined, located and selected by the assessor of the county or city and county in which said grounds are situated but said grounds need not be contiguous or in one tract.

5. The state board of equalization shall prescribe all procedure, affidavits and forms required to carry into effect the tax exemption of property specified in section one *a* of article thirteen of the constitution.

6. Any person or officer of an educational institution entitled to or applying for the exemption from taxation under section one *a* of article thirteen of the constitution shall make a return thereof to the assessor annually, the same as of property listed for taxation, and shall accompany the same by an affidavit showing that the educational institution is of collegiate grade and is not conducted for profit, that the grounds for which exemption is claimed are those within which its buildings are located and do not exceed one hundred acres in area and that the securities and income for which exemption is claimed are used exclusively for the purposes of education. Every such person or officer shall in addition give all information required and answer all questions contained in the forms and affidavits prescribed by the state board of equalization. Any false statement made or sworn to in such forms or affidavits shall constitute and be punishable as perjury.

Penalty.

Further proof may be required. Application for exemption must be made annually.

7. Any assessor or deputy assessor may, in his discretion, require other or additional proof of the facts stated by such affiant before allowing the exemption claimed. Failure upon the part of any educational institution entitled to such exemption, to make affidavit or furnish evidence as required by this act, between the first Monday in March and the first Monday in July of each year, shall be deemed a waiver of such exemption by such educational institution.

History: Added June 5, 1915 (Statutes 1915, p. 1216). In effect August 8, 1915.

CHAPTER II.

DEFINITIONS.

3617. Definition of certain terms and words.

Definitions of property liable to assessment.

3617. Whenever the terms mentioned in this section are employed in this act, they are employed in the senses hereafter affixed to them:

First. The term "property" includes moneys, credits, bonds (except railroad or quasi-public corporations), stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership.

Second. The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. A mortgage, deed of trust, contract or other obligation by which a debt is secured, when land is pledged for the payment and discharge thereof, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the land so pledged.

4. Improvements.

Third. The term "improvements" includes:

1. All buildings, structures, fixtures, fences and improvements erected upon or affixed to the land, except telephone and telegraph lines.

2. All fruit, nut-bearing, or ornamental trees and vines, not of natural growth, excepting fruit and nut-bearing trees under four years of age, and grapevines under three years of age.

3. Alfalfa, after the first year's planting.

Fourth. The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" or "improvements."

Fifth. The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt from a solvent debtor.

Sixth. The term "credits" means those solvent debts, not secured by mortgage or trust deed, owing to the person, firm, corporation, or association assessed. The term "debt" means those unsecured liabilities owing by the person, firm, corporation, or association assessed to bona fide residents of this state, or firms, associations or corporations doing business therein; but credits, claims, debts, and demands due, owing or accruing for or on account of money deposited with savings and loan corporations or with building and loan associations, shall, for the purpose of taxation be deemed and treated an an interest in the property of such corporation, and shall not be assessed to the creditor or owner thereof. (1909.)

History: Original section took effect March 16, 1872. Amended March 30, 1874 (Amendments to Codes 1873-74, p. 142); took effect immediately. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 58); took effect immediately. Amended January 24, 1878 (Amendments to Codes 1877-78, p. 64); took effect immediately. Amended March 22, 1880 (Amendments to Codes 1880, p. 5); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 56); took effect immediately. Amended March 16, 1889 (Statutes 1889, p. 203); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 310); took effect immediately. Amended March 18, 1905 (Statutes 1905, p. 192); took effect sixty days from passage. Amended April 15, 1909 (Statutes 1909, p. 919); took effect sixty days from passage.

CHAPTER III.

ASSESSMENT OF PROPERTY.

- 3627. Property to be assessed at full cash value, etc.
- 3628. Railroads to be assessed by state board of equalization. Other property to be assessed where.
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- 3630. Supervisors to furnish blank forms of statements, etc.
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- 3637. Property situate in another county.
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- 3639. Property assessed to trustees, guardians, executors, etc.
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 3662. Judgment, how and when entered against assessor.
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Property to be assessed at full cash value, etc.

3627. All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value. (1917.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 6); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 57); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended May 11, 1917 (Statutes 1907, p. 427); in effect July 27, 1917.

Assistance for Assessor.

CHAPTER 749.

An act to add a new section to the Political Code to be numbered four thousand forty-one b, authorizing boards of supervisors to appoint an advisory board to cooperate with the county assessor in appraising taxable property in the county.

[Approved June 12, 1915.]

The people of the State of California do enact as follows:

SECTION 1. A new section is hereby added to the Political Code to be numbered four thousand forty-one b and to read as follows:

4041b. Whenever, in the judgment of the board of supervisors of any county, it is deemed to be for the best interest of the county, on account of changes in land values, that there be appointed an advisory board to cooperate with the county assessor in making the annual appraisement of real property therein for taxation purposes, the board of supervisors, by a four-fifths vote, may appoint such advisory board, which shall consist of three members. Before any person thus appointed shall enter upon the duties of his office he shall take the oath of office and shall execute such bond as the supervisors may prescribe. The members of the advisory board shall be allowed their necessary expenses and each member shall receive a compensation of six dollars per day while actually engaged in the duties of his office. All claims for compensation and expenses hereunder shall be paid out of the general fund of the county after approval by the board of supervisors.

Where property is to be assessed.
 Land assessed in not exceeding 640 acres.
 State lands.

3628. Except as otherwise provided in the constitution of this state, all taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels, or subdivisions, not exceeding six hundred forty acres each; and tracts of land containing more than six hundred forty acres, which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Land sold by the state for which no patent has been issued, shall be assessed the same as other land, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the

purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits, not secured by mortgage or trust deed on real estate, a deduction therefrom shall be made of debts due bona fide residents of this state. (1917.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 7); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 311); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3629. The assessor must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m. on the first Monday in March. Such statement shall be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and, if liable to taxation in the county in which the statement is made, also the city, town, township, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands, in parcels or subdivisions, not exceeding six hundred forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred forty acres, which have been sectionized by the United States government, improvements and personal property, including all vessels, steamers, and other watercraft; and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found.

6. All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent, deducting from the sum total of such credits such debts only, unsecured by trust deed, mortgage, or other lien or real or personal property, as may be owing by such person, firm, or corporation to bona fide residents of this state. No debts shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included. (1917.)

Duties of assessor.

Misnomer as to name.

Solvent credits, how assessed.

Assessor to require statement of assessable property containing what.

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 7); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 58); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Supervisors to furnish assessor blank forms of statements.
Oath to statement.

3630. The board of supervisors must furnish the assessor with blank forms, as prescribed by the state board of equalization, of the statements provided for in the preceding sections, affixing thereto an affidavit, which must be substantially as follows:

"I, _____, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled, at twelve o'clock m., on the first Monday in March last, and which is not already assessed this year; and that I have not, in any manner whatsoever, transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are owing to bona fide residents of this state, or to firms or corporations doing business in this state."

Requirements relative to statements.

The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 143); took effect immediately. Amended March 22, 1880 (Amendments to Codes 1880, p. 8); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 312); took effect immediately.

3631. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. (1872.)

History: Original section; took effect March 16, 1872.

Powers of assessor.

3632. Every assessor shall have power:

1. To require any person found within such assessor's respective county to make and subscribe an affidavit, giving his name, place of residence or place of business, and whether he is the owner of any taxable property;

2. To subpoena and examine any person in relation to any statement furnished him, or which discloses property which is assessable in his respective county that may be stored with, in possession of, or controlled by such person. And he may exercise this power in any county where the person whom he desires to examine may be found, but shall have no power to require such person to appear before him in any other county than that in which the subpoena is served upon them. Every person who shall refuse to furnish the statement hereinbefore required in this chapter, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested to do so by the assessor, as above provided, shall, for each and every refusal, and as often as the same is repeated, forfeit to the people of the state the sum of one hundred dollars, in gold coin of the United States, to be recovered by action brought in their name by the respective assessor in any police or justice's court. In case such affidavit shall show the residence of the person making the same to be in any county other than that in which it is taken, or the statement shall disclose property in any county other than that in

Penalty for refusal to obey assessor's subpoena.

May subpoena witnesses.

which it is made, the assessor shall, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. One half of all moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county, and the other half may be retained by the assessor for his own use. (1901.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 144); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 647); took effect immediately.

3633. If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment book, opposite the name of such person, and must make an estimate of the value of such property of such person, and the assessor must transmit on or before the first day of July of each year to the board of supervisors a verified report in writing, separate from the assessment roll, containing a complete list of all persons who refuse or neglect to furnish a statement of their property as herein provided for, or to comply with the requirements of this title, the amount of the assessment upon the property of such persons, with a statement of the particular facts, if any, upon which the assessment has been made, and the valuation of the property so assessed ascertained. The board of supervisors must investigate and inquire into all assessments and values so fixed by the assessor, as prescribed by this section, and for that purpose must require each taxpayer affected by such assessment and valuation to make a statement under oath, within ten days from making an order requiring such statement, setting forth specifically, all the property owned or controlled, or in the possession of such taxpayer on the first Monday of March. If any taxpayer, after demand made by the board of supervisors, shall neglect or refuse to make and deliver to the said board of supervisors the statement, duly verified, herein provided for, or to comply with the other requirements of this title, the said board of supervisors, sitting as a county board of equalization, must increase such assessment and valuation to such an amount as the said board shall deem just; but the value fixed by the assessor must not, in any case, be reduced by the board of supervisors. (1897.)

History: Original section took effect March 16, 1872. (Section is based on section 13, Statutes of 1861, p. 423.) Amended March 4, 1897 (Statutes 1897, p. 63); took effect immediately.

3634. When the assessor has not received from the owner of a tract of land the statement required by section three thousand six hundred and twenty-nine, or when such statement does not sufficiently describe a tract of land to enable the assessor to assess the same as required by law, and the owner or his agent, or in case they can not be found or are unknown, the person in possession thereof, neglects for ten days after demand by the assessor to furnish said assessor with such description, the assessor shall cite such owner, or agent, or person in possession, to appear before the superior court of the county wherein such land is situated, within five days after service of such citation, and the said superior court shall, upon the day named in such citation, to the exclusion of all other business, proceed to hear the return and answer of the said owner, or agent, or person in possession, to the said citation; and if the court shall find that the land has not been surveyed or divided

into subdivisions of six hundred and forty acres, or less, so that each part or parcel may be described by metes and bounds, then the court shall, by order duly entered in open court, direct the county surveyor to make a survey, and define the boundaries and location of said land by parcels or subdivisions not exceeding six hundred and forty acres each, and deliver the same to the county assessor. The expense of making such survey and description by the county surveyor shall be a lien upon the land, and shall, when approved by the said superior court, be certified by said court to the tax collector of the county where the land is situated, and be added to the taxes upon said land, and be collected as other taxes are collected. (1880.)

Expense of
making
surveys.

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 9); took effect immediately.

3635. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property. (1872.)

Property
of persons
absent or
unknown.

History: Original section; took effect March 16, 1872.

3636. If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name. If unknown to the assessor, and if it does not appear of record as aforesaid, the property must be assessed to unknown owners. (1891.)

History: Original section took effect March 16, 1872. Amended March 14, 1891 (Statutes 1891, p. 107); took effect immediately.

3637. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail or express, to the assessor of the proper county, who must assess the same as other taxable property therein. (1872.)

Property
situate in
another
county.

History: Original section; took effect March 16, 1872.

3638. All personal property consigned for sale to any person within this state, from any place out of this state, or from other county or counties in this state, must be assessed in the county where the property is situated, as other property. (1901.)

Consigned
property.

History: Original section took effect March 16, 1872. Amended March 23, 1901 (Statutes 1901, p. 648); took effect immediately.

3639. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment. (1872.)

Assessments
to agents,
trustees,
etc.

History: Original section; took effect March 16, 1872.

3640. Repealed. (1901.)

Repealed.

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 9); took effect immediately. Repealed March 7, 1881 (Statutes 1881, p. 59); took effect immediately. Added March 28, 1895 (Statutes 1895, p. 312); took effect immediately. Repealed March 23, 1901 (Statutes 1901, p. 648); took effect immediately.

3641. Repealed. (1917.)

History: Original section took effect March 16, 1872. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3642. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions. (1872.)

Undistributed or unpartitioned property of decedents.

History: Original section; took effect March 16, 1872.

SEC. 1669, CODE OF CIVIL PROCEDURE, (1905). Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county, and municipal taxes, legally levied upon the property of the estate, and any inheritance tax which is due and payable have been paid.

3643. A ferry boat is a vessel traversing across any of the waters of the state, between two constant points, regularly employed for the transfer of passengers and freight, authorized by law so to do. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed, and the taxes paid, in the county where located. The value of all watercraft, and of all toll bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll bridges. (1917.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 10); took effect immediately. Amended March 12, 1885 (Statutes 1884-85, p. 93); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3644. All vessels, except ferryboats, which may be registered, of every class which are by law required to be registered, must be assessed, and the taxes thereon paid, only in the county, or city and county, where the same are registered, enrolled, or licensed. (1885.)

History: Original section took effect March 16, 1872. Amended March 12, 1885 (Statutes 1884-85, p. 93); took effect immediately.

3645. Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this state, the owners of which reside in this state, must be assessed in this state. (1872.)

Registered vessels, where assessed.

History: Original section; took effect March 16, 1872.

3646. All boats and small craft not required to be registered, must be assessed in the county where their owner resides. (1872.)

Boats and small craft.

History: Original section; took effect March 16, 1872.

3647. Money and property in litigation in possession of a county treasurer, of a court, county clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes be paid thereon under the direction of the court. (1872.)

Property and money in litigation.

History: Original section; took effect March 16, 1872.

Property concealed, misrepresented, etc., to be assessed at ten times its value, etc.

3648. Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of supervisors. (1872.)

History: Original section; took effect March 16, 1872.

Property escaping assessment previous year.

3649. Any property discovered by the assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value. (1872.)

History: Original section; took effect March 16, 1872.

Property, how listed, and contents of assessment book.

3650. The assessor must prepare an assessment book, with appropriate headings as directed by the state board of equalization, in which must be listed all property within the county, and which shall show under the appropriate head:

1. The name and post-office address, if known, of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in any tract six hundred forty acres, locality, and the improvements thereon. When any tract of land is situated in two or more school, road, or other revenue districts of the county, the part in each such district must be separately assessed. The improvements to be assessed against the particular section, tract, or lot of land upon which they are located; city and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and the improvements thereon.

3. All property within the limits of an incorporated city or town shall be assessed in an assessment book separate and distinct from the assessment book containing the assessment of property situate outside the limits of such incorporated city or town; or, if but one assessment book is used, then in a separate and distinct part of such book; *provided*, that all property assessed shall be arranged on the assessment book by elementary school districts, as such districts are legally formed and exist on the first Monday in March of each year; *provided, further*, that where any school district embraces property situate both within and without the limits of an incorporated city or town, such property shall be assessed and kept separate and distinct on the assessment book.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate.

6. The cash value of improvements on such real estate.

7. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

8. The cash value of all personal property, exclusive of money.

9. The amount of money.

10. Taxable improvements owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment book. No value shall, however, be assessed against the exempt land, nor under any circumstances shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

11. The school, road, and other revenue districts in which each piece of property assessed is situated.

12. The total value of all property.

13. In entering assessments containing solvent credits subject to deductions, as provided in section three thousand six hundred twenty-eight of this code, he must enter in the proper column the value of the debts entitled to exemption and deduct the same. In making the deductions from the total value of property assessed, as above directed, he must enter the remainder in the column provided for the total value of all property for taxation.

14. Such other things as the state board of equalization may require. (1917.)

History: Original section took effect March 16, 1872. (Section based on section 20, Statute of 1861, p. 424.) Amended April 1, 1876 (Amendments to Codes 1875-76, p. 11); took effect immediately. Amended March 22, 1880 (Amendments to Code 1880, p. 10); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 59); took effect immediately. Partially repealed March 9, 1883 (Statutes 1883, p. 72); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 313); took effect immediately. Amended March 18, 1905 (Statutes 1905, p. 134); took effect sixty days from passage. Amended June 1, 1917 (Statutes 1917, p. 1643); in effect July 31, 1917.

3651. The assessor must prepare an index to the assessment book, which must show the name of the taxpayer, each page whereon his assessment appears, and such other information as the state board of equalization may require, which board shall prescribe the form of such index. (1907.)

Index to
assessment
book.

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 145); took effect immediately. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 12); took effect immediately. Amended March 22, 1880 (Amendments to Codes 1880, p. 12); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 60); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 314); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately.

3652. On or before the first Monday in July, in each year, the assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, _____, assessor of (or deputy assessor, as the case may be), _____ county, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and _____, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill will, or otherwise; nor allowed any one to escape a just and equal assessment through favor or reward, or otherwise." But the failure to take or subscribe such an

Assessment
book, when
to be com-
pleted.

Oath of
assessor.

affidavit, or any affidavit, will not in any manner affect the validity of the assessment. (1881.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 13); took effect immediately. Amended March 7, 1881 (Statutes 1881, p. 61); took effect immediately.

Assessor to
furnish in-
corporated
cities with
copy of
assessment.

3653. 1. On or before the third Monday in July of each year, the assessor must furnish such incorporated cities, towns, lighting, water and irrigation districts within the county as shall make written request for the same, on or before the first Monday in March of each year, a complete certified copy of his assessment book, so far as such assessment book pertains to property within the limits of said incorporated cities, towns, lighting, water and irrigation districts.

2. The assessor may charge incorporated cities, towns, lighting, water and irrigation districts not to exceed seven cents per folio of one hundred words for each copy of his assessment book, furnished such incorporated cities, towns, lighting, water and irrigation districts.

3. The assessor must, on the first Monday of each month, furnish all such incorporated cities, towns, lighting, water and irrigation districts within the county as shall make written request for the same, a description of all personal property, the name and address, by street and number, of the owners, and assessed value thereof, whenever the tax on such property is collected by the assessor.

4. The assessor may charge incorporated cities, towns, lighting, water and irrigation districts not to exceed seven cents per folio of one hundred words for such description of personal property. (1913.)

History: Original section took effect March 16, 1872. Amended February 28, 1891 (Statutes 1891, p. 14); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 314); took effect immediately. Amended June 13, 1913 (Statutes 1913, p. 814); in effect August 10, 1913.

Merging County and City Tax Offices.

CHAPTER 161.

An act authorizing the transfer of certain powers, duties and functions of certain cities and officers thereof to the officers of counties in which any such city is located.

[Approved May 3, 1915; in effect August 8, 1915.]

The people of the State of California do enact as follows:

SECTION 1. Any or all of the functions, hereinafter set forth, of any city organized under a freeholders' charter, authorized by the constitution of the State of California, and any or all of the powers, duties or functions of any officer, board or commission thereof, may be transferred to and performed by any officer, board or commission of the county in which such city is situated; *provided, however*, the transfer of such function is authorized to be made by the charter of such city, and such transfer is made in the manner required by such charter; *and provided, further*, that such transfer is approved on behalf of such county by resolution adopted by the board of supervisors of such county. Such resolution shall set forth the powers, duties or functions to be transferred to and performed by the specified officers, boards or commissions of such county, and the compensation to be paid by such city to such county for the services to be performed by such officers, boards or commissions. Any such transfer may be rescinded at any time by the joint action of such city taken in the manner provided by its charter, or by resolution of the governing body of such city, in case the manner of rescinding such transfer is not provided in such charter, and by resolution of the board of supervisors of such county. Any such transfer may be rescinded, upon one year's notice, by the separate action of such city or county, taken as aforesaid.

SEC. 2. The functions of any city organized under a freeholders' charter, and the powers, duties or functions of the officers thereof, which may be transferred and performed as provided in section one of this act, shall be

the powers, duties or functions relating to the assessment of property for taxation, the collection of taxes levied for municipal purposes, the collection of assessments, the sale of property for the nonpayment of taxes or assessments levied thereon, and such other powers, duties or functions as the charter of such city may authorize to be transferred and performed as provided by law.

3654. As soon as completed, the assessment book, together with the map books, statements, and military roll, must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. In the mean time, the assessment book, map book and statements must remain in his office for the inspection of all persons interested. After the board of equalization has completed its labors, the map books and statements shall be returned to the county assessor's office, and shall be kept in said office for future reference. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 315); took effect immediately.

3655. On the second Monday in July of each year, the assessor of each county must transmit to the state board of equalization, in such form as said board shall require, a statement, showing:

1. The several kinds of personal property.
2. The average and total value of each kind.
3. The number of live stock, number of bushels of grain, number of gallons of wines or liquors, number of pounds or tons of any article sold by the pound or ton.
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres of each.
5. A true statement of the agricultural and industrial pursuits and products of the county, with such other statistical information as said board shall require. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 315); took effect immediately.

3656. Every assessor who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county, in an action brought in the name of the people by the attorney general, when directed to do so by the state board of equalization. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 315); took effect immediately.

3657. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed. (1872.)

History: Original section; took effect March 16, 1872.

3658. The board of supervisors of each county must provide and furnish the assessor with the proper books, blanks, maps and plat books for the use of his office. Such maps and plat books shall show the private lands owned or claimed in the county, and if surveyed under the authority of the United States, the divisions and subdivisions thereof,

Disposition
of assess-
ment book,
maps, state-
ments, etc.

Assessor to
report to
state board
of equalization.

Contents
of report.

Penalty for
failure to
complete
assessment
book and
to render
report.

Persons
claiming
ownership
of property
and desir-
ing to be
assessed.

Supervisors
to furnish
assessor with
maps, plat
books, etc.

Same.

Office room,
furniture,
etc.Failure of
supervisors,
duty of
state board
of equal-
ization.Expense a
charge
against
county.

with their acreage, according to such survey; if held under Spanish grant, the exterior boundaries of such grants, the divisions and subdivisions and number of acres claimed. The proper maps and plat books of cities, towns, villages, school districts, and road districts must in like manner be provided and furnished. The state board of equalization shall prescribe the forms for such books, blanks, maps, and plat books, and may require such map and plat books to be indexed to show owners' names, give correct description for assessment, show improvements and assessed value. The board of supervisors of each county shall in like manner furnish the assessor the necessary office room, furniture, and stationery. If the board of supervisors of any county fails or refuses to provide and furnish the assessor with the proper books, blanks, maps, and plat books, and the necessary office room, furniture, and stationery, as in this section provided, then the state board of equalization must, upon the application of the assessor, provide and furnish the same. The cost of such books, blanks, maps, and plat books, office room, furniture, and stationery shall be a county charge, whether the same be provided and furnished by the board of supervisors or by the state board of equalization, and must be paid in the same manner as other county charges from the county general fund. (1901.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 316); took effect immediately. Amended February 27, 1901 (Statutes 1901, p. 50); became a law without the governor's approval; took effect immediately.

Other Provisions of Law Relating to Assessor's Maps.

SEC. 4125, POLITICAL CODE (COUNTY GOV. ACT). The assessor must perform such duties as are prescribed in title IX, part III, of this code, and such other duties as are required by law; *provided*, that where any salary is allowed to the assessor, by law, then where such officer is charged, or to be charged, with the making of maps or block-books, he shall be allowed the actual cost of making the same, and must file with the county auditor a sworn statement, monthly, showing in detail the names of persons, and amounts paid to each for such expense, and the assessor must thereupon pay over and account to the county, or city and county, for the difference between any amount allowed for such purpose, and the amount actually expended by him therefor.

SEC. 4218, POLITICAL CODE (COUNTY GOV. ACT). The surveyor shall copy, plat, or trace all maps for record in the office of the recorder of the county for which he shall be elected, and shall be ex officio deputy recorder for said county for such purposes, at the cost of the party filing the same for record; *provided, however*, that all maps and plats filed by a licensed land surveyor, and such other maps and plats as are filed and are thereby made a record, are exempt from the provisions of this section. The surveyor shall plat, trace, blue-print, or otherwise make all county, township, road, district, and all other maps, and all assessor's block-books, for the county of which he is surveyor; *provided*, that in counties where the office of assessor has not prior to the taking effect of this title been provided with such maps and block-books and the surveyor neglects and refuses to make the same, the board of supervisors may contract with other competent person or persons for the making thereof, and may provide for the payment therefor from the funds of the county. All such maps which are platted, traced, blue-printed, or otherwise made as aforesaid, shall be filed in the surveyor's office, together with all data obtained by the surveyor from other sources, and the same thereafter shall become the property of the county.

Official
maps of
cities,
towns,
sub-
divisions,
etc., to be
made.Names for
streets, etc.

3658a. Whenever any city, town, or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town, or such subdivision shall be or has been laid out into lots or blocks for the purpose of sale or transfer, it shall be lawful for the city engineer, or the county or city and county surveyor, under the direction and with the approval of the city council or board of supervisors of said city, county, or city and county, to make an official map of such city, town, or subdivision, giving to each block on such map a number, and to each lot or subdivision in such block a separate number or letter, and giving names to such streets, avenues, lanes, courts, commons, or parks,

as may be delineated on such official map. Whenever the city council or board of supervisors of such city, county, or city and county, shall adopt such map as the official map of the subdivision, town, city, county, or city and county, it shall be lawful to, and the assessor shall, describe such lots, blocks, or parcels of land by numbers or letters as delineated on such map in assessing such property, and it shall be lawful and sufficient to describe such lots or blocks in any deeds, conveyances, contracts, or obligations affecting any such lots or blocks as designated on such official map, a reference to such map sufficient for the identification thereof being coupled with such description. Such engineer or surveyor, under the direction and with the approval of the city council or board of supervisors of such city, county, or city and county, may compile such map from maps on file, or may resurvey or renumber the blocks, or renumber or reletter the lots in such blocks, or change the names of streets. All surveys and the field notes thereof made by any such engineer or surveyor, under the provisions of this section, or in surveying officially any lots or parcels of land in any city, town, county, or city and county, for the purposes of any such map, shall be filed in the office of the surveyor or engineer, as the case may be, and shall become a part of the public records of such city, town, county, or city and county. Each and every map, made and adopted as hereinabove provided, shall be certified under the hands of a majority of the members and the presiding officer and secretary and official seal, if any, of the authority adopting the same. Such certificate shall set forth in full the resolution adopting such map, with the date of adoption; and such map, so certified, shall be forthwith filed in the office of the county recorder of the county, or city and county, wherein the platted lands are situate, and the said recorder shall immediately securely fasten and bind, in one of a series of firmly bound books to be provided, together with the proper indexes thereof and appropriately marked for the reception of the maps herein provided for, each such map so filed with him; and the same shall become an official map for all the purposes of this section when so certified, filed and bound, but not before. This section is hereby made applicable to all cities, towns, and villages in this state, as well as to the counties, and cities and counties thereof, whether the same be incorporated or not; and the words "city council or board of supervisors" wherever used herein shall be deemed to include the proper corresponding governing board and authority in each such place; and the words "city engineer" and "county or city and county surveyor" shall be deemed to include the like or corresponding officer, subject to the direction of such "corresponding governing board and authority" in each such place; or, if there be no such officer subject to such direction, such "corresponding board and authority" may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this act in the places subject to its jurisdiction, and the persons so appointed shall have the same authority and shall perform the same duties as are given to and enjoined upon "city engineers" and "county or city and county surveyors," respectively, in like cases. The services of such engineers and surveyors so employed shall be contracted for, examined, passed upon, audited, and paid as are other debts contracted by such governing boards and authorities. (1903.)

History: Added March 25, 1903 (Statutes 1903, p. 408); took effect sixty days after passage.

Duty of assessor in assessing.

Blocks may be renumbered.

Duty of surveyor or engineer.

Certificate of council.

Filing of map.

Effect of filing.

Operation of section.

Curative Act—Defective Maps.

CHAPTER 790.

An act to cure defects in maps or plats filed for record prior to January 1, 1917, and in deeds or conveyances referring to such maps.

[Approved June 1, 1917.]

The people of the State of California do enact as follows:

SECTION 1. Any map or plat recorded or filed with the county recorder of the county in which the lands shown on said map or plat are situated prior to the first day of January, one thousand nine hundred seventeen, shall for all purposes be deemed to have been properly so recorded or filed and to comply with all the requirements of the laws in force at the time it was so recorded or filed, notwithstanding any defect, omission or informality in the preparation or execution of such map or plat or of the affidavits, certificates, acknowledgments, indorsements, acceptances of dedication or other matters thereon or required to be thereon by any law in force at the time of such recording or filing, and all sales or conveyances of land by reference to any such map or plat shall be valid as though said map or plat had been made, certified, indorsed, acknowledged and filed in all respects in accordance with the laws in force at the time said map or plat was so recorded or filed. And any deed or conveyance referring to any such map or plat which, prior to the passage hereof, was copied into the proper book of records kept in the office of any county recorder shall impart after the passage hereof notice of its contents to subsequent purchasers and incumbents, notwithstanding any defect, omission or informality in the preparation or execution of such map or plat or of the affidavits, certificates, acknowledgments, indorsements, acceptances of dedication or other matters thereon or required to be thereon by any law in force at the time of such recording or filing.

Surveyor general to report to assessor all state lands sold.

3659. On or before the first Monday in March in each year, the surveyor general of the state and the tide land commissioners must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by congressional divisions and subdivisions, or lots and blocks, together with the names of the purchasers thereof, and the amount of principal unpaid, if any, on the first Monday in March. (1897.)

History: Original section took effect March 16, 1872. Amended April 1, 1897 (Statutes 1897, p. 427); took effect immediately.

Assessor liable for taxes on property unassessed.

3660. The assessor and his sureties are liable on his official bonds for all taxes on property within the county, which, through his wilful failure or neglect, is unassessed. (1872.)

History: Original section; took effect March 16, 1872.

Same.

3661. Any taxpayer who shall have knowledge of any property that has escaped taxation as provided in the preceding section, may file with the board of supervisors an affidavit, setting forth the fact that such property has, through the wilful failure or neglect of the assessor, escaped taxation, together with a description of the property as near as such taxpayer may be able to give; whereupon said board shall direct the district attorney to commence an action on the assessor's bond for the amount of taxes lost from such wilful failure or neglect. (1895.)

Duty of district attorney.

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 316); took effect immediately.

3662. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered. The amount thus recovered shall be distributed as provided in section three thousand eight hundred and sixteen of this code. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 316); took effect immediately.

3663. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon and turnpike toll roads, must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county. (1917.)

History: Added March 27, 1872 (Statutes 1871-72, p. 586); took effect immediately. Amended March 30, 1874 (Amendments to Code 1873-74, p. 158); took effect sixty days from passage. Amended March 22, 1880 (Amendments to Codes 1880, p. 13); took effect immediately. Amended April 15, 1880 (Amendments to Codes 1880, p. 58); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 316); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Judgment to be entered against assessor.

Water ditches, wagon and turnpike toll roads.

TAXATION FOR STATE PURPOSES.

POLITICAL CODE.

PART III, TITLE IX.

CHAPTER III—(continued.)

[In effect May 11, 1917.]

- 3664. What corporations and property taxable solely for state purposes.
- 3664a. Corporations and tax ratios applicable.
- 3664b. Insurance companies, how taxable and rate.
- 3664c. Banks, how taxable and rate.
- 3664d. Franchises, how taxable and rate.
- 3665. Special privilege or franchise, how treated.
- 3665a. Gross receipts defined.
- 3665b. Definition of what is "operative property."
- 3665c. Reports to state board by corporations, what to contain, and "subsidiary company" defined.
- 3666. Protests as to what shall constitute operative property.
- 3666a. Insurance companies, duty of Insurance Commissioner to report, and contents of report.
- 3666b. Bank reports, and method of taxation.
- 3666c. Secretary of State to make daily report to state board.
- 3667. General franchises, owners and holders to file report, containing what.
- 3667a. General franchises, assessors and auditors to report county assessed values of.
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- 3668. Assessments by state board, time of; clerical errors; method of taxing bank shares; publication of general notice by state board.
- 3668a. Record of assessment for state taxes, preparation of and delivery to Controller.
- 3668b. Taxes, when due and payable; method of collection when no real property is security; Controller to publish notice of taxes due; penalties for delinquency.
- 3668c. Taxes, lien of; other provisions relating to payment.
- 3669. Payments to state treasury, and tax receipts; correction of illegal assessments and payments.
- 3669a. Protests on tax payments, contents thereof; suits to recover taxes paid.
- 3669b. Reassessments after judgment of invalidity.
- 3669c. Controller to mail notice of delinquency; suspension of corporate powers for nonpayment; certification of suspended charters; penalty for acting as corporation after suspension; method of reviving corporate charter; Attorney General to bring suit for delinquent taxes, and rights of defense.
- 3669d. Revivor of charters forfeited prior to March 3, 1917.
- 3669e. State Board of Equalization, additional powers granted; secrecy of reports filed by general corporations.
- 3670. Auditor to report bank assessments to state board; board has power to equalize bank assessments.
- 3670a. Insurance taxation; state board to equalize county and city assessments.
- 3670b. Operative assessment roll, preparation by assessors; duplicate to be sent state board; power of equalization by board; fixing of bond tax rates by local authorities; auditors and clerks to report to Controller on bond taxes; duty of Controller.
- 3670c. Controller to pay bond taxes to counties and cities; time and method of payment; disposition of excess in local accounting.
- 3671. Reimbursement of counties for loss of revenue in certain instances.
- 3671a. Treasurer's settlement with state, provisions of.
- 3671b. Counties to reimburse local districts for losses in certain instances.
- 3671c. Deficiency in state revenues; method of collecting by ad valorem taxation.
- 3671d. Old ad valorum tax laws continued in force for certain state purposes.

Subjects
taxed
exclusively
for state
purposes.

- 3664.** Taxes levied, assessed and collected as hereinafter provided upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing-room car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning and other car companies operating upon railroads in this state; companies doing express business on any railroad, steamboat, vessel, or stage line

in this state; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies, and trust companies; and taxes upon all franchises of every kind and nature, shall be entirely and exclusively for state purposes, and shall be assessed and levied by the state board of equalization, and collected in the manner hereinafter provided. The word "company" and the word "companies" as used in section fourteen of article thirteen of the constitution of this state and in the sections of this code enacted to carry the same into effect shall include persons, partnerships, joint stock associations, companies, and corporations. (1917.)

History: Added March 22, 1880 (Amendments to Codes 1880, p. 13); took effect immediately. Added March 14, 1881 (Statutes 1881, p. 82); took effect immediately. Added March 9, 1883 (Statutes 1883, p. 65); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 400); took effect sixty days from passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Repealed and added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3664a. 1. All railroad companies, including street railways, whether operated in one or more counties; all sleeping car, dining car, drawing-room car and palace car companies, all refrigerator, oil, stock, fruit, and other car-loaning, and other car companies, operating upon the railroads in this state; all companies doing express business on any railroad, steamboat, vessel, or stage line in this state; all telegraph and telephone companies; and all companies engaged in the transmission or sale of gas or electricity shall annually pay to the state a tax upon their franchises, roadways, roadbeds, rails, rolling stock, poles, wires, pipes, canals, conduits, rights of way, and other property, or any part thereof, used exclusively in the operation of their business in this state, computed as follows: Said tax shall be equal to the percentages hereinafter fixed upon the gross receipts from operation of such companies and each thereof within this state.

2. When such companies are operating partly within and partly without this state, the gross receipts within this state shall be deemed to be all receipts on business beginning and ending within this state, and a proportion, based upon the proportion of the mileage within this state to the entire mileage over which such business is done, of receipts on all business passing through, into, or out of this state.

3. The percentages above mentioned shall be as follows: On all railroad companies, including street railways, five and one-fourth per cent; on all sleeping car, dining car, drawing-room car, palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies, three and ninety-five hundredths per cent; on all companies doing express business on any railroad, steamboat, vessel or stage line, nine-tenths of one per cent; on all telegraph and telephone companies, four and two-tenths per cent; on all companies engaged in the transmission or sale of gas or electricity, five and six-tenths per cent.

4. Such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property above enumerated of such companies except as otherwise provided in section fourteen of article thirteen of the constitution of this state.

5. The word "municipal" as used in section fourteen of article thirteen of the constitution of this state and in the sections of this code enacted to carry the same into effect shall apply to incorporated towns and cities

Gross receipts from interstate business.

Percentages on gross receipts.

In lieu of what.

"Municipal" defined.

formed under article eleven of the constitution of this state and to none other. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336) ; in effect immediately.

Tax on
insurance
companies.

3664b. Every insurance company or association doing business in this state shall annually pay to the state a tax of two per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance in companies or associations authorized to do business in this state; *provided*, that there shall be deducted from said two per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property of such companies, except county and municipal taxes on real estate, and except as otherwise provided in the constitution of this state; *provided*, that when by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state, doing business in such other state or country, or upon their agents therein, in excess of such taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, imposed upon insurance companies of such other state or country, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind must be imposed by the insurance commissioner upon insurance companies of such other state or country doing business in this state. (1917.)

Retaliatory
clause.

History: New section. Added May 11, 1917 (Statutes 1917, p. 336) ; in effect immediately.

Tax on
state and
national
banks.

3664c. 1. The shares of capital stock of all banks, organized under the laws of this state, or of the United States, or of any other state and located in this state, shall be assessed and taxed to the owners or holders thereof by the state board of equalization, in the manner hereinafter provided, in the city or town where the bank is located and not elsewhere. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one and sixteen hundredths per centum upon the value thereof. The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual assets of such bank.

In lieu of
what.

2. This tax shall be in lieu of all other taxes and licenses, state, county, and municipal, upon such shares of stock and upon the property of such bank, except county and municipal taxes on real estate and except as otherwise provided in the constitution of this state.

Deduction
of real
estate.

3. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value, as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes.

Liability
for tax.

4. The banks shall be liable to the state for this tax and the same shall be paid to the state by them on behalf of the stockholders in the manner and at the time hereinafter provided, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid.

5. The moneyed capital, reserve, surplus, undivided profits, and all other property belonging to unincorporated banks or bankers of this state, or held by any bank located in this state which has no shares of capital stock, or employed in this state by any branches, agencies, or other representatives of any banks doing business outside of the State of California, shall be likewise assessed and taxed to such banks or bankers by the said board of equalization, in the same manner as above provided for incorporated banks, and taxed at the same rate that is levied upon the shares of capital stock of incorporated banks, as provided in the first paragraph of this section.

6. In the case of a branch, an agency, or other representative of any bank doing business outside of this state, the capital of said branch, agency, or representative used in this state shall be taken to be the average amount owed by the said branch, agency, or representative to the bank of which it is a branch, agency, or representative during the year ending the first Monday in March. The value of said property shall be determined by taking the entire property invested in such business, together with all reserve, surplus, and undivided profits, at their full cash value, and deducting therefrom the value as assessed for county taxes of any real estate, other than mortgage interests therein, owned by such bank or banker and taxed for county purposes. Such taxes shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property of the banks and bankers mentioned in this section, except county and municipal taxes on real estate, and except as otherwise provided in the constitution of this state. All moneyed capital and property of the banks and bankers mentioned in this paragraph shall be assessed and taxed at the same rate as an incorporated bank, provided for in this section. In determining the value of the moneyed capital and property of the banks and bankers mentioned in this section, the said state board of equalization shall include and assess to such banks all property and everything of value owned or held by them which would go to make up the value of the capital stock of such banks and bankers, if the same were incorporated and had shares of capital stock.

7. The word "banks" as used in section fourteen of article thirteen of the constitution of this state and in the sections of this code enacted to carry the same into effect shall include banking associations, unincorporated banks and bankers, branches, agencies or other representatives of any banks doing business outside of the State of California, savings and loan societies, and such trust companies, as conduct the business of receiving money on deposit, but shall not include building and loan associations. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3664d. All franchises, other than those of the companies mentioned in sections three thousand six hundred sixty-four *a*, three thousand six hundred sixty-four *b*, and three thousand six hundred sixty-four *c* of this code, shall be assessed at their actual cash value, after making due deduction for good will, in the manner hereinafter provided, and shall be taxed at the rate of one and two-tenths per centum each year, and the taxes collected thereon shall be exclusively for the benefit of the state. These franchises shall include the actual exercise of the right to be a corporation and to do business as a corporation under the laws of this state and the actual exercise of the right to do business as a corporation in this state when such right is exercised by a corporation incorporated under the laws of any other state or country, also the right, authority, privilege, or permission to maintain wharves, ferries, toll roads,

Tax on
unincor-
porated
banks and
on branches
and agencies
of foreign
banks.

Branch
bank or
agency.

Deductions
of real
estate.

In lieu of
what.

"Banks"
defined.

Tax on
franchises.

"Fran-
chises"
defined.

and toll bridges, and to construct, maintain or operate, in, under, above, upon, through or along any streets, highways, public places, or waters, any mains, pipes, canals, ditches, tanks, conduits or other means for conducting water, oil, or other substances. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Municipal charges for special franchises not released.

3665. Nothing in any section of this code shall be construed to release any company from the payment of any amount agreed to be paid or required by law to be paid, now or hereafter, for any special privilege or franchise granted by any of the municipal authorities of this state.

History: Added March 22, 1880 (Amendments to Codes 1880, p. 14); took effect immediately. Added March 14, 1881 (Statutes 1881, p. 85); took effect immediately. Amended March 8, 1883 (Statutes 1883, p. 66); took effect immediately. Amended March 9, 1889 (Statutes 1889, p. 349); took effect sixty days from passage. Amended March 31, 1891 (Statutes 1891, p. 438); took effect July 1, 1891. Amended April 1, 1897 (Statutes 1897, p. 401); took effect sixty days from passage. Amended April 1, 1897 (Statutes 1897, p. 427); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); Repealed and added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

"Gross receipts from operation" defined.

3665a. 1. The term "gross receipts from operation" as used in section three thousand six hundred sixty-four *a* of this code is hereby defined to include all sums received from business done within this state, during the year ending the thirty-first day of December last preceding, including the company's proportion of gross receipts from any and all sources on account of business done by it within this state, in connection with other companies described in said section.

Any company claiming that the levy of the percentage fixed by section three thousand six hundred sixty-four *a* of this code on the total gross receipts of such company results in double taxation of the property of such company, may make application to the state board of equalization for a hearing on such matter. Said board shall have power to take evidence and determine the facts with respect to such claim and in event said board finds the claim of such company to be true, said board may authorize such company to deduct from its reported gross receipts that amount of such receipts which, if included in such total gross receipts, would cause such double taxation.

Interstate business.

2. In case of companies operating partly within and partly without this state, the gross receipts within this state shall be deemed to be all receipts on business beginning and ending within this state, and the proportion based upon the proportion of the mileage within this state to the entire mileage over which such business is done, of receipts on all business passing through, into or out of this state.

No deductions allowed.

3. No deduction shall be allowed from the gross receipts from operation for commissions, rebates, or other repayments, except only such refunds as arise from errors or overcharges; nor shall any deduction be allowed for payments from gross receipts to other companies for any purpose whatsoever, except such refunds as arise from errors or overcharges.

Certain income excepted.

4. Income derived from property not defined in this section and in sections three thousand six hundred sixty-four *a*, three thousand six hundred sixty-five *b*, and three thousand six hundred sixty-five *c* of this code as

operative property shall not be included in the gross receipts for the purpose of determining the tax on the property and franchises provided for in section three thousand six hundred sixty-four *a* of this code. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3665b. 1. The term "operative property" as used in any section of this code shall include:

(a) In the case of railroad companies, including street railways: The franchises, roadway, roadbed, rails, rolling stock, rights of way, sidings, spur tracks, switches, signal systems, cranes and structures used in loading and unloading cars, fences along the right of way, poles, wires, conduits, power lines, piers, used exclusively in the operation of the railroad business, depot grounds and buildings, ferryboats, tugs and car-floats used exclusively in the operation of the railroad business; machine shops, repair shops, round houses, car barns, power houses, substations, and other buildings, used in the operation of the railroad business and so much of the land on which said shops, houses, barns, and other buildings are situate as may be required for the convenient use and occupation of said buildings.

(b) In the case of sleeping car, dining car, drawing-room car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies operating upon railroads in this state: The franchises, cars, and other rolling stock.

(c) In the case of companies doing express business on any railroad, steamboat, vessel, or stage line in this state: The franchises, cars, trucks, wagons, horses, harness, and safes.

(d) In the case of telegraph and telephone companies doing business in this state: The franchises, rights of way, poles, wires, pipes, conduits, cables, switchboards, telegraph and telephone instruments, batteries, generators, and other electrical appliances, and exchange and other buildings used in the telegraph and telephone business and so much of the land on which said buildings are situate as may be required for the convenient use and occupation of said buildings.

(e) In the case of companies engaged in the transmission or sale of gas or electricity: The franchises, towers, poles, wires, pipes, canals, tunnels, ditches, flumes, aqueducts, conduits, rights of way, dams, reservoirs, water and water rights used exclusively in the business of the transmission or sale of gas or electricity; transformers, substations, gas-holders, gas and electric generators, switches, switchboards, meters, electrical and gas appliances, oil tanks, power plants, power houses, and other buildings and structures used in the operation of the business of the transmission or sale of gas or electricity and so much of the land on which said buildings and structures are situate as may be required for the convenient use and operation of said buildings; *provided*, that the operative property of the companies enumerated in this section, shall also include any other property not above enumerated that may be reasonably necessary for use by said companies exclusively in the operation and conduct of the particular kinds of business enumerated in section three thousand six hundred sixty-four *a* of this code.

The operative property mentioned in subdivisions (a), (b), (c), (d), and (e), of this section shall not be subject to taxation for county, municipal, or district purposes except as otherwise provided for in the constitution and laws of this state; *provided, however*, that when any piece or parcel of property in this state owned by any of the companies mentioned in section three thousand six hundred sixty-four *a* of this code is used partially by such company for any use reasonably necessary to the operation of any of the lines of business enumerated in said

operative property defined:

(a) Of railroads.

(b) Of car companies.

(c) Of express companies.

(d) Of telegraph and telephone companies.

(e) Of gas and electric companies.

of all classes of companies.

Operative property exempt from local taxation.

Property in divided use.

section and such property is also partially rented to or used by others or is partially used by the company for some other lines of business not among those so enumerated, or for purposes not reasonably necessary to the operation of any of said enumerated lines of business, it shall be considered operative property in that proportion only which that part of the property mentioned in this proviso used by the company in the operation of any of said enumerated lines of business bears to the whole of the property mentioned in this proviso.

Plants under construction.

2. Any property of the classes mentioned in this section owned by a company constructing a new railroad, street railway, telegraph or telephone system, or plant or system for the transmission or sale of gas or electricity, no part of which new road, line, plant, or system is in operation, and the same classes of property when held by an operating company solely for the construction of a new railroad or railway line, a new telegraph or telephone system, or a new plant or system for the transmission or sale of gas or electricity, and not to be used for betterments or additions to roads, lines, plants, or systems already under operation, shall not be considered operative property and shall be subject to assessment and taxation for county, municipal, and district purposes. Any part of such property of any company mentioned in this section shall be classed and assessed as operative property when the state board of equalization shall determine that such property is rendering a substantial public service.

State board to issue instructions on operative property.

3. The state board of equalization shall have power to make rules and issue instructions not inconsistent with the constitution and laws of this state for the guidance of assessors in determining what is operative property and what is nonoperative property of companies named in this section. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Report of public service companies:

3665c. Such person or officer, as the state board of equalization may designate, of each of the companies mentioned in section three thousand six hundred sixty-four *a* of this code, shall within ten days after the first Monday in March of each year, file with the said board a report signed and sworn to by one or more of said persons or officers, showing in detail for the year ending the thirty-first day of December last preceding, the various items as follows:

(1) Name of company,

1. The name of the company, its nature, whether a person or persons, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory or country organized, the nature of its business, the location of its principal place of business, the names and post office addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and post office address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it and the names and addresses of any company of which it may be subsidiary.

(2) Property to be reported,

2. Each of the companies mentioned in said section shall report, in such detail as the state board of equalization shall prescribe, all of its property in this state which comes under the definition of operative property in section three thousand six hundred sixty-five *b* of this code. When any such company operates both within and without this state it shall report the mileage over which it operates both within and without this state. It shall also report the location of said property within this state by counties, cities and counties, municipalities, and districts, in such manner and in such detail as said board of equalization shall prescribe. It

shall also, at the same time, furnish a duplicate of the report covering so much of said property as is located in any county, city and county, municipality, or district, to the assessor of the county, city and county, city, or district in which such property is located.

The state board of equalization may require the filing in its office of maps descriptive of all the operative property of any such companies, and may prescribe the form and size of such maps and the details to be shown therein, and may require that similar maps descriptive of the operative property within each county, city and county, municipality, or district, shall be filed in the assessor's office in each county, city and county, city, or district in which any of said property is located. Maps to be filed.

3. The amount of capital stock issued, and the amount of money received therefor, showing separately the capital stock issued and the money received therefor of the operating company and of each subsidiary company in this state. (3) Capital stocks.

4. The dividends paid during the year ending the thirty-first day of December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine, those of the operating company and of each subsidiary company in this state to be shown separately. (4) Dividends.

5. The funded and floating debts and the rate of interest thereon, showing separately the debts of the operating company and of each subsidiary company in this state, on the thirty-first day of December last preceding. (5) Funded and other debts.

6. The market value of the stock and of the outstanding bonds, or, when said stock or bonds have no market value, the actual value thereof, for such periods and for such dates as the state board of equalization shall prescribe. (6) Market value stock and bonds.

7. The amounts expended for improvements during the year ending the thirty-first day of December last preceding, how expended and the character of the improvements. (7) Improvements.

8. The gross receipts from operation within this state for the year ending the thirty-first day of December last preceding, the gross receipts from such classes of business as the state board of equalization may designate, to be reported separately; also, where the property and business are partly within and partly without this state, the gross receipts for said period on all business beginning and ending entirely within this state, and that proportion of the gross receipts from all business passing through, into, or out of this state, which the mileage within this state bears to the total mileage over which such interstate business is done as further defined in section three thousand six hundred sixty-five *a* of this code. (8) Gross receipts.

9. The operating and other expenses. (9) Operating expenses.

10. The balances of profit and loss, between such periods as the state board of equalization may determine. (10) Profit and loss.

11. Such other matters as the state board of equalization may deem necessary in order to enable it to assess and levy the taxes provided for in section fourteen of article thirteen of the constitution of this state. (11) Other matters.

Each such company shall include in its report the property and business of all subsidiary companies as that term is hereinafter defined in this section, whose property and business are operated by it, whether by virtue of a lease, an operating contract or agreement, or by virtue of control through the ownership of stock or otherwise, even though such subsidiary companies maintain an independent legal existence and separate accounts. Subsidiary companies to be included in report.

The term "subsidiary company" is hereby defined as applying to a company which is merged in the operating system of an operating company in any of the ways above stated, whose property and franchises would be taxable under section three thousand six hundred sixty-four *a* of this code, if "Subsidiary companies" defined.

the same were operated independently. No separate report need be rendered by a subsidiary company whose property, franchises, and operations are fully and completely covered by the report of an operating company, unless the state board of equalization shall deem such a separate report necessary.

Separate reports of certain subsidiary companies.

Each such company operating the property and business of a subsidiary company in some line of business to which a different percentage of the gross receipts is applied by said section from that applied by said section to the gross receipts of the operating company, shall report such receipts of the subsidiary company separately. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Assessor to report to state board property improperly claimed as operative property.

Notice to company. State board to investigate.

Hearing and decision by state board.

State board to report to assessor and company property improperly claimed as operative property.

Hearing and decision by state board.

3666. 1. If any assessor finds in the report of the operative property in his county, city and county, municipality, or district, furnished to him by any of the companies as required in section three thousand six hundred sixty-five *c* of this code, any piece or parcel of property which he regards as nonoperative property, or partially operative and partially nonoperative, he shall, within thirty days after receiving such report, notify the state board of equalization thereof by mail, which notice shall contain a general description of the property and the assessor's reasons for regarding the same as nonoperative property. He shall also mail a copy of the notice to the company whose property is involved. The said board shall investigate the nature of the property and its use, and, if an agreement between the said board, the assessor, and the company as to the proper classification of such property can not be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain decide the matter in dispute, and determine whether such property is operative or nonoperative or in what proportion operative and in what proportion nonoperative. The said board shall enter its decision in its minutes, and shall send a copy thereof to the county assessor and the company, and also to the proper officer of any municipality affected thereby. Said decision shall be binding upon all parties, the state, the county, city and county, municipality, or district, and the company, unless set aside by a court of competent jurisdiction, and each such assessor must note the decision on his assessment roll, and must assess such property accordingly.

2. If the state board of equalization shall find in the report of operative property furnished to said board by any company under the provisions of section three thousand six hundred sixty-five *c* of this code, any piece or parcel of property which said board regards as nonoperative property, or partially operative and partially nonoperative, the board shall, within thirty days after receiving such report, notify said company thereof in writing, which notice shall contain a general description of the property and the reasons for regarding the same as nonoperative. It shall also mail a copy of the notice to any assessor in whose county, city and county, municipality, or district the property is located. If an agreement between the said board, the assessor, and the company as to the proper classification of such property can not be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain, decide the matter in dispute, and determine whether such property is operative or nonoperative, or in what proportion operative and in what proportion nonoperative.

tive. The said board shall enter its decision in its minutes, and shall send a copy thereof to the county assessor and the company, and also to the proper officer of any municipality affected thereby. Said decision shall be binding upon all parties, the state, the county, city and county, municipality, or district, and the company, unless set aside by a court of competent jurisdiction, and each such assessor must note the decision on his assessment roll and must assess the property accordingly. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 68); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 440); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 316); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Repealed and added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3666a. The insurance commissioner of this state must on or before the last day of March in each year make and file with the state board of equalization a report showing: Insurance commissioner to report:

1. All companies, domestic and foreign, and all firms, associations, or persons, engaged in the business of insurance in this state. (1) Companies,
2. The total amount of the gross premiums received from its business in this state by each of said companies, firms, associations, and persons during the year ending the thirty-first day of December last preceding. (2) Gross premiums,
3. The amount of return premiums paid on business done in this state and the amount of reinsurance on business done in this state paid to other insurance companies or associations authorized to do business in this state, by said companies, firms, associations, and persons, during said year. (3) Return premiums and reinsurance,
4. The amount of any county and municipal taxes paid during said year by such companies on real estate owned by them in this state, and where said real estate is located. (4) Local taxes.

In making this report he shall list separately all those companies, firms, associations, or persons, which, under the second proviso in subdivision (b) of section fourteen of article thirteen of the constitution and of section three thousand six hundred sixty-four *b* of this code, are subject to a tax at a rate higher than two per cent on their gross premiums, or to any additional tax or burden, and shall indicate in each case the amount and character of said tax or burden. Every company, firm, association, or person engaged in the business of insurance in this state shall file with the insurance commissioner on or before the first Monday in March in each year such statements in addition to, or in modification of, the statements required to be rendered under the provisions of article sixteen of chapter three of title one of part three of the Political Code as said insurance commissioner shall deem necessary to enable him to prepare the report required of him in this section and said statements shall be verified in the same manner as is provided for the verification of other statements by insurance companies in section six hundred ten of the Political Code, except that, those filed by foreign companies shall be verified by the oath of the manager thereof residing within this state. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3666b. The president, secretary, treasurer, cashier, or such other officer as the state board of equalization may determine, of every bank referred to in section fourteen of article thirteen of the constitution of this state, shall on the first Monday in March or within ten days thereafter make and file with the state board of equalization a sworn statement showing the condition of said bank at the close of business on the

Companies subject to retaliatory law.

Additional statements by insurance companies.

Unincorpo-
rated banks,
branches,
etc.

first Monday in March, and showing the amount of its authorized capital stock, the number of shares issued and the par value thereof, the amount received for stock issued, the amount of its surplus and undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each as of record on the books of the bank at the close of business on the first Monday in March; or, in the case of unincorporated banks and bankers, of banks having no capital stock and of branches, agencies, or other representatives of banks doing business outside of this state, the moneyed capital, reserve, surplus, undivided profits, and other taxable property, as further defined in section fourteen of article thirteen of the constitution of this state, used by them in the banking business in this state, also a description of the real estate, other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation for the then current fiscal year.

Branches
and
agencies.

Branches, agencies, or other representatives of banks doing business outside of this state, shall report the average amount owed by said branches, agencies, or other representatives, to the banks of which they are branches, agencies, or representatives, during the year ending the first Monday in March, also a description of the real estate, other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation for the then current fiscal year.

Form of
reports.

The state board of equalization shall prescribe the form of reports, the manner of their verification, and may require the submission of tax receipts, or copies thereof certified to be correct by any notary public, in order to verify the statements as to the assessed value of the real estate, and may require such further information or statements as said board may deem necessary. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Secretary
of state to
report cor-
porations,
etc.

3666c. The secretary of state shall daily report to the state board of equalization the name, corporate number, principal place of business, date of incorporation, term of existence, funded debt, if any, authorized capital stock, and post office address of all corporations, whether formed under the laws of this state or of any other state or country, a copy of the articles of incorporation of which is filed in his office and corporations which are authorized to do business in this state. He shall also report at said time all certificates of increase or decrease of capital stock or funded debt, dissolution, or other termination of corporate existence, change of name, consolidation and mergers, change of principal place of business, and such other information regarding corporations as said state board may require to assist it in making the assessments and levying the taxes as provided in section fourteen of article thirteen of the constitution of this state. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Owners of
franchises
to report:

3667. The owner or holder of every franchise subject to taxation as provided in section three thousand six hundred sixty-four *d* of this code, shall within ten days after the first Monday in March in each year make a written report to the state board of equalization, signed and sworn to by the holder or owner himself, if an individual, or by one of the copartners if such owner or holder is a copartnership, or by the president or vice president and the treasurer or secretary if the owner is a corporation, containing such a concise statement or description of every franchise possessed or enjoyed on said day by such owner or holder, as

the state board of equalization may prescribe, a copy of the law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation, or burden imposed upon such franchise, or under which the same is enjoyed, and containing also:

1. The name of the company, its nature, whether a person or persons, (1) Name, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory, or country organized, the nature of its business, the location of its principal place of business, the names and post office addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and post office address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it.
2. The amount of its authorized capital stock, the amount thereof (2) Capital issued and outstanding on the first Monday in March, and the amount stock, paid in thereon or the value of the property received therefor.
3. The funded and floating debts and the interest paid thereon showing (3) Funded separately the debts of the operating company and of any subsidiary and other debts, companies in this state on the thirty-first day of December last preceding.
4. The market value of the stock and of the outstanding bonds, or, (4) Market when said stock or bonds have no market value, the actual value thereof, value stocks, and bonds, for such periods and for such dates as the state board of equalization shall prescribe.
5. The assessed value of its property as shown by the last completed (5) Assessed assessment roll in each county, city and county, and city in the state for value of property, the purposes of taxation, and if any property of such corporation be assessed and taxed outside of the State of California the place where assessed, the amount of such assessment and taxes there paid the current fiscal year.
6. The market and actual value of all nonassessable real and personal (6) Actual property owned by such company. value of non-assessable property.
7. The amount and actual value of all of said real and personal property referred to in the last two preceding subdivisions of this section that is owned and possessed by the company at the date of its report; also, the amount and actual value of any other and additional real or personal property owned by the company at the date of said report. (7) Actual value of property owned.
8. The dividends paid during the year ending the thirty-first day of (8) Dividends, December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine. Those of the operating company and of each subsidiary company in this state to be shown separately.
9. The gross receipts from all sources for the year ending the thirty- (9) Gross first day of December last preceding, from the entire property and business, the gross receipts from such classes of business as the state board may designate, to be reported separately; also, the total gross receipts from intrastate business and from interstate business so far as the same relate to this state, the same to be separately stated.
10. The operating and other expenses. (10) Operating expenses.
11. The balances of profit and loss, between such periods as the state board of equalization may determine. (11) Profit and loss.
12. Such other matters as the state board of equalization may deem necessary in order to enable it to assess and levy the taxes provided for in section fourteen of article thirteen of the constitution of this state. The state board of equalization shall ascertain and determine from the foregoing reports or from the best information it can obtain the actual State board to assess cash value on the first Monday in March of each such franchise, and shall (12) Other matters. franchises.

assess and levy the taxes thereon in accordance with the provisions of subdivision (d) of section fourteen of article thirteen of the constitution of this state. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 69); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 440); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 317); took effect immediately. Repealed and added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Assessor to report to state board.

3667a. Every assessor or auditor shall, in the manner, at the times, and for the year required by the state board of equalization, report to said board upon such forms as may be prescribed by said board the valuation placed by him upon the property of any company subject to an assessment upon its franchise under the provisions of sections three thousand six hundred sixty-four *d* and three thousand six hundred sixty-seven of this code. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Arbitrary assessment in case of failure or refusal to report.

3667b. If any company mentioned in section three thousand six hundred sixty-four of this code shall fail or refuse to furnish to the state board of equalization within the time prescribed by law the verified report provided for by law, the state board of equalization must note such failure or refusal in the record of assessments for state taxes provided for in section three thousand six hundred sixty-eight *a* of this code, and must make up an estimate of the amount of the gross receipts, gross premiums, value of the shares of capital stock, or value of the franchises, of such company and must assess the same at the amount thus estimated, which assessment shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. And if in the succeeding year any such company shall again fail or refuse to furnish the verified report required by law, the state board shall make an estimate of the amount of the gross receipts, gross premiums, value of the shares of capital stock, or value of the franchise of such company, which estimate shall not be less than twice the amount of the estimate made by said board in the previous year, and shall note such failure or refusal as above provided, and the said estimate so made shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. In case of each succeeding consecutive failure or refusal the said board shall follow the same procedure until a true statement shall be furnished.

Any company failing or refusing to make and furnish any report prescribed by law to be made to the state board of equalization, or rendering a false or fraudulent report shall be guilty of a misdemeanor and subject to a fine of not less than three hundred dollars and not exceeding five thousand dollars for each such offense.

Any person required to make, render, sign, or verify any report, as aforesaid, who makes any false or fraudulent report, with intent to defeat or evade the assessment required by law to be made, shall be guilty of a misdemeanor, and shall for each such offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year in the county jail of the county where said report was verified, or be subject to both said fine and imprisonment, at the discretion of the court. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Second arbitrary.

Succeeding years.

Penalty for failure or refusal to report.

Penalty for false report.

3667c. The state board of equalization may, for good cause shown, by order entered upon its minutes, extend for not exceeding thirty days, the time fixed for filing any report required by said board. Extension of time for filing report.

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3668. The state board of equalization must meet at the state capitol on the first Monday in March of each year, and continue in open session from day to day, Sundays and holidays excepted, until the first Monday in July. Between the first Monday in March and the third Monday before the first Monday in July the board must assess and levy the taxes as and in the manner provided for in section fourteen of article thirteen of the constitution of this state, and sections of this code enacted to carry the same into effect. State board to meet for assessment.

The assessments must be made to the company, person or association owning or operating the property subject to said tax, or, in the case of banks, banking associations, savings and loan societies and trust companies, to the stockholders therein; *provided, however,* that in the case of banks in liquidation the assessment shall be made to the receiver, trustee or officer in charge of such liquidation, as the case may be, as the representative of the stockholders thereof. Assessments, how made. Banks in liquidation.

If the name of the owner is unknown to the board, such assessment must be made to unknown owners. "Unknown."

Clerical errors occurring or appearing in the name of any company, person, association, or stockholder whose property is correctly assessed, or in the making, or extension of any assessment upon the records of the state board of equalization, which do not affect the substantial rights of the taxpayer, shall not invalidate the assessment. Clerical errors in name.

Provided, however, that if any bank shall by resolution of its board of directors, request the state board of equalization to assess to and in the name of such bank so requesting, the entire taxable value of all the shares of the capital stock of such bank, as determined by said state board, instead of assessing such shares to and in the name of the individual stockholders or shareholders owning the same, and if such bank shall promise that it will, upon being notified by said state board, of such assessment thereof to said bank, and of the amount of taxes to be paid upon such assessment, pay such taxes at the times when taxes assessed and levied under the provisions of section fourteen of article thirteen of the constitution of this state and sections of this code enacted to carry the same into effect are due and payable, which request to assess said bank and promise to pay said tax shall be in substantially the following form: Bank waiver of assessment to individual stockholders.

The state board of equalization is hereby instructed to assess in the name of this bank and not to the individual stockholders or shareholders therein, the taxable value of all the shares of capital stock in this bank and such bank hereby promises to pay to the state treasurer the amount of the tax levied upon such assessment when such taxes are due and payable under the laws of this state. Form of waiver.

By (here insert title of official signing). Assessment to be in name of bank.
Then the state board may assess the capital stock to and in the name of such bank and said promise to pay the taxes shall be binding upon such bank and collection of such taxes from such bank may be enforced in the manner and by the same method as is provided for the collection of other taxes assessed and levied under the provisions of section fourteen of article thirteen of the constitution of this state and sections of this code enacted to carry the same into effect.

Board to publish notice of completion of assessment.

Correction of assessments.

Record of assessments for state taxes.

Controller, delivery of roll to.

Certifying to assessment roll.

Failure to certify to record of assessments.

Taxes, when due and when delinquent.

On the third Monday before the first Monday in July the said board shall publish a notice in one daily newspaper of general circulation published at the state capital, in one daily newspaper of general circulation published in the city and county of San Francisco, and in one daily newspaper of general circulation published in the city of Los Angeles, that the assessment of property for state taxes has been completed, and that the record of assessments for state taxes will be delivered to the controller on the first Monday in July, and that if any company, person, or association is dissatisfied with the assessment made by the board, it may, at any time before the taxes thereon shall become due and payable, apply to the board to have the same corrected in any particular. The board shall have power at any time on or before the first Monday in July to correct the record of assessments for state taxes and may increase or decrease any assessment therein if in its judgment the evidence presented or obtained warrants such action. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 69); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 441); took effect July 1, 1891. Repealed and added May 11, 1917 (Statutes 1917, p. 427); took effect July 27, 1917.

3668a. The state board of equalization must prepare each year a book, in one or more volumes, to be called the "record of assessments for state taxes," in which must be entered, either in writing or printing, or by both writing and printing, each assessment and levy made by said board upon the property and franchises mentioned in section three thousand six hundred sixty-four of this code, describing the property assessed, and such assessments shall be classified and entered in such separate parts of said record as the board shall prescribe. On the first Monday in July the secretary of the state board of equalization must deliver to the controller of state the record of assessments for state taxes, certified to by the chairman and secretary of the board, which certificate shall be substantially as follows: "We, _____, chairman, and _____, secretary, of the state board of equalization of the State of California do hereby certify that between the first Monday in March and the first Monday in July, 19____, the state board of equalization made diligent inquiry and examination to ascertain all property and companies subject to assessment and taxation for state purposes, as required by the constitution of this state; that said board has faithfully complied with all the duties imposed upon it by the constitution and laws of the State of California; that said board has not imposed any unjust or double assessment through malice or ill will, or otherwise; nor allowed any company or property to escape a just assessment through favor or reward, or otherwise."

But the failure to subscribe such certificate to such record of assessments for state taxes, or any certificate, shall not in any manner affect the validity of any assessment. Such record of assessments shall constitute the warrant for the controller to collect the taxes assessed and levied upon the property and franchises mentioned in section three thousand six hundred sixty-four of this code. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3668b. The taxes assessed and levied as provided in section fourteen of article thirteen of the constitution of this state, and in and by the provisions of this code enacted to carry the same into effect, shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after said first Monday

in July at six o'clock p. m., and unless paid prior thereto, fifteen per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p.m., an additional five per cent shall be added to the amount thereof; and the unpaid portion, or the remaining one-half of said taxes shall become delinquent on the first Monday in February next succeeding the day upon which they became due and payable, at six o'clock p.m.; and if not paid prior thereto five per cent shall be added to the amount thereof; *provided*, that all taxes provided for or levied under said section fourteen of article thirteen of the constitution of this state and the provisions of this code enacted to carry the same into effect which are not fully secured by real property are due and payable at the time the assessment is made. When in the opinion of the state board of equalization any of the taxes provided for in this section are not a lien upon real property sufficient to secure the payment of the taxes, said board may direct the controller, or his duly authorized representative, to collect the same at any time before the first Monday in August thereafter, and the controller may collect the taxes by seizure and sale of any property owned by the company against whom the tax is assessed.

The sale of any property so seized shall be made at public auction and of a sufficient amount of the property to pay the taxes, penalties and costs, and be made after one week's notice of the time and place of such sale given by publication in a newspaper of general circulation published in the county where the property seized is situate, or if there be no newspaper of general circulation published in such county, then by posting of such notice in three public places in such county.

Said notice shall contain a description of the property to be sold together with a statement of the amount of the taxes, penalties and costs due thereon and the name of the owner of said property and a further statement that unless the taxes, penalties and costs are paid on or before the day fixed in said notice for such sale of said property, or so much thereof as may be necessary to pay said taxes, penalties and costs, said property will be sold in accordance with law and said notice.

On payment of the price bid for any property sold, the delivery thereof with bill of sale executed by the controller vests the title in the purchaser. The unsold portion of any property so seized, may be left at the place of sale at the risk of the owner. All of the proceeds of any such sale in excess of the taxes, penalties, and costs, must be returned to the owner of the property sold, and until claimed must be deposited with the state treasurer, as trustee for such owner, and subject to the order of the owner thereof, his heirs, or assigns.

Within ten days after the receipt of the record of assessments for state taxes, the controller must begin the publication of a notice to appear daily for two weeks, in one daily newspaper of general circulation published at the state capital, in one daily newspaper of general circulation published in the city and county of San Francisco, and in one daily newspaper of general circulation published in the city of Los Angeles, specifying:

1. That he has received from the state board of equalization the record of assessments for state taxes.
2. That the taxes therein assessed are due and payable on the first Monday in July and that one-half thereof will be delinquent on the sixth Monday after the first Monday in July at six o'clock p. m., and that unless paid to the state treasurer at the capital prior thereto, fifteen per cent will be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five per cent will be added to the amount thereof; and that the remaining

Taxes not
secured by
real estate
may be
collected on
assessment.

Sale of
property
for taxes.

Contents of
notice.

Bill of sale
and disposi-
tion of
residue of
property.

Controller
to publish
notice
when taxes
are due.

Contents of
above notice.

one-half of said taxes will become delinquent on the first Monday in February next succeeding the day upon which they became due and payable, at six o'clock p. m.; and if not paid to the state treasurer at the capital prior thereto, five per cent will be added to the amount thereof. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Taxes a
lien.

Tax has
effect of a
judgment.

Bankruptcy
and
dissolution.

Taxes to be
paid to
state
treasurer.

No deduc-
tions for
bond taxes.

Taxes
marked
paid.

Controller
to receipt
for taxes.

Taxes
erroneously
collected.

3668c. The taxes levied under the provisions of section fourteen of article thirteen of the constitution of this state and sections of this code enacted to carry the same into effect shall constitute a lien upon all the property and franchises of every kind and nature belonging to the companies subject to taxation for state purposes, which lien shall attach on the first Monday in March of each year. Every tax herein provided for has the effect of a judgment against the company, and every lien created by the constitutional and statutory provisions aforesaid has the effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until such taxes, penalties, and costs are paid, or the property sold for the payment thereof. No final discharge in bankruptcy or decree of dissolution shall be made and entered by any court, nor shall the county clerk of any county or the secretary of state file any such discharge or decree, or file any other document by which the term of existence of any corporation shall be reduced or terminated until all taxes, penalties, and costs due on assessments made under the constitutional and statutory provisions aforesaid shall have been paid and discharged.

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3669. 1. All taxes assessed and levied under the provisions of section fourteen of article thirteen of the constitution of this state and sections of this code enacted to carry the same into effect shall be paid to the state treasurer, upon the order of the controller, without deduction for any taxes assessed and levied to pay the principal and interest of any bonded indebtedness mentioned in subdivision (e) of section fourteen of article thirteen of the constitution of this state, and the amount due to the cities, cities and counties, counties, towns, townships, and districts on account of said taxes assessed and levied for such bonded indebtedness shall be paid to said cities, cities and counties, counties, towns, townships, or districts in the manner provided by law. The controller must mark the date of payment of any tax on the record of assessments for state taxes.

2. The controller must give a receipt to the person paying any tax, or any part of any tax, specifying the amount of the assessment and the tax, or part of tax, paid, and the amount remaining unpaid, if any, with a description of the property assessed; *provided*, that the receipt for the second half of the taxes may refer, by number or in any other intelligible manner, to the receipt given for the first half of said taxes, in lieu of a description of the property assessed.

3. Whenever any taxes, penalties, or costs collected and paid to the state treasurer as hereinbefore provided, shall have been paid more than once, or shall have been erroneously or illegally collected, or when any taxes shall have been collected and paid pursuant to said provisions of law upon a computation erroneously made by reason of clerical mistake of the officers or employees of the state board of equalization, or shall have been computed in a manner contrary to law, the state board of

equalization shall certify to the state board of control the amount of such taxes, penalties, or costs, collected in excess of what was legally due, from whom they were collected or by whom paid, and if approved by said board of control, the same shall be credited to the company or person to whom it rightfully belongs, at the time of the next payment of taxes. No claim for such credit shall be so audited, approved, allowed, or paid unless presented within one year after the payment sought to be refunded.

4. In case the assessment of any property or any company is duplicated upon the record of assessments for state taxes, or there appears thereon the assessment of any company whose charter has been forfeited or right to do business in this state has been forfeited, or the assessment of any company which, for any reason, could not be legally assessed, the state board of equalization or the controller shall certify such fact to the state board of control and said board of control shall authorize the cancellation of such assessment. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 70); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 442); took effect July 1, 1891. Amended March 22, 1905 (Statutes 1905, p. 823); took effect sixty day after passage. Repealed and added May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3669a. 1. Any company, person or association claiming and protesting as herein provided that the assessment made against him or it by the state board of equalization is void in whole or in part may bring an action against the state treasurer for the recovery of the whole or any part of such tax, penalties or costs paid on such assessment upon the grounds stated in such protest, but no such action may be brought later than the third Monday in February next following the day on which the taxes were due, nor unless such company, person or association shall have filed with the state controller at the time of payment of such taxes a written protest stating whether the whole assessment is claimed to be void, or if a part only, what part, and the grounds upon which such claim is founded; and when so paid under protest the payment shall in no case be regarded as voluntary.

2. Whenever under the provisions of this section an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento, which demand must be granted. The attorney general must defend the action. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and proofs, etc. appeals are applicable to the proceedings herein provided for. A failure to begin such action within the time herein specified shall be a bar against the recovery of such taxes. In any such action the court shall have power to render judgment for plaintiff for any part or portion of the tax, penalties or costs found to be void and so paid by plaintiff upon such assessment.

3. In no case shall any judgment be rendered in favor of plaintiff in any action brought against the state treasurer to recover any tax, when said action is brought by or in the name of an assignee of the person, company or corporation paying said tax, or by any person, company or corporation other than the person, company or corporation that has paid said tax. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Reassess-
ment
provisions.

3669b. 1. Every assessment of property made after November 8, 1910, under the provisions of section fourteen, article thirteen of the constitution and under the provisions of any law enacted to carry into effect said section of the constitution which is, or may hereafter be adjudged to be invalid by reason of any illegality, invalidity, or irregularity, declared or existing, in the assessment of such property, or in the mode provided for the assessment thereof, shall be remade and the property reassessed and equalized for each year for which such assessment is invalid as aforesaid, and for the year for which the assessment of such property was invalid as aforesaid, and such reassessment and equalization shall be made by the same officers and boards, at the same time or times, as are prescribed by law for the assessment and equalization of property, of the same classes or kinds as the property which hereby is required to be reassessed. The assessment and equalized assessment of such property shall be entered on the several assessment rolls or book in the same manner that assessments of such property are or were required by law to be entered for the year or years for which such assessments shall be made. And there is hereby levied for state purposes the same rates of taxation for each of such respective years as were levied upon such property for each of said years for said state purposes.

How made.

How
entered.

Lety of tax.

Procedure.

Lety and
collection
of tax.

Delinquent
penalties.

Credits
allowed.

Limitation
as to
actions.

2. All property herein and hereby authorized to be reassessed shall be reassessed and equalized by the proper officers and boards, at the value to which and to the person or corporation to whom or to which such property ought, for each of such years, to have been assessed, under such rules of notice and at the times and in the modes as are prescribed for the assessment and equalization of like classes of property; and the assessment and equalization thereof, and the levy and collection of taxes thereunder, shall be made by the proper officers at the time, upon like notice and in the manner now or hereafter provided by law for making assessments and equalizing the same, and for the levy and collection of taxes on like classes of property; and if the taxes so relieved shall become delinquent, there shall be added thereto and the amount thereof the same percentage as a penalty for such delinquency as is added to other delinquent taxes on like classes of property; and such delinquent taxes and penalties added thereto shall be collected by the proper officers in the manner now or hereafter provided by law for the collection of delinquent taxes and penalties upon like classes of property, the collectors of such taxes to allow as credits thereon all payments theretofore made on the tax as first levied.

3. There shall be no limitation or limitations as to the time in which actions for the collections of taxes levied under this section may be commenced, and all the provisions of law now or hereafter provided in respect to assessments, equalization, levy, and collection of taxes shall, where applicable, apply to reassessments, equalization, and relevies and collections of taxes made under the provisions of this section. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Controller
to send
notice of
delinquent
taxes.

Contents
of notice

3669c. 1. Within ten days after the first Monday in February, the controller shall send by mail to the last known address of any company whose taxes are delinquent a notice of the amount of said taxes, penalties, and costs, and that if the said taxes, penalties, and costs are not paid on or before the Saturday preceding the first Monday in March next thereafter at six o'clock p.m. of said day, the corporate powers, rights and privileges of such delinquent company, if it be a domestic corporation, will be at that time suspended and thereafter incapable of exercise, and that if the delinquent company be a foreign corporation it

will thereupon forfeit its right to do intrastate business in this state. If the taxes, penalties, and costs are not paid within the time specified in said notice, the controller shall, on said Saturday preceding the first Monday in March at six o'clock p.m. of said day, mark on the record of assessments for state taxes opposite the assessment of the delinquent corporation the words "corporate powers suspended," if the delinquent corporation be a domestic corporation, and thereupon said corporate powers shall be suspended and incapable of exercise until restored as hereinafter provided; and if the delinquent corporation be a foreign corporation the controller shall mark on the record of assessments for state taxes opposite the assessment of such delinquent corporation the words "right to do intrastate business forfeited" and thereupon said right to do such business shall be so forfeited. He shall at once report to the secretary of state the name and number of charter of each corporation whose corporate powers have been suspended or right to do business has been forfeited for nonpayment of taxes.

On or before the first Monday in April of each year the controller shall make a list of all corporations subject to the tax imposed under sections 3664a, 3664b, 3664c, and 3664d of this code and which have failed to pay the same and transmit a certified copy thereof to each county clerk and county recorder in this state. Said county clerks and county recorders shall file such certified copies in their respective offices in such manner that the same shall be preserved in the form of a permanent record of such office and easily identified by and available to the public. Said copies so certified by the controller and filed as herein provided shall in the case of each corporation state whether such corporation is a domestic or foreign corporation and specify the penalty which each corporation has incurred for failure to pay the tax imposed by this act. Such certified copies so filed with either of said county officers, or any copy thereof certified by the controller shall be received in evidence in any court in lieu of the original record on file with the controller and shall be prima facie evidence of the truth of all statements contained therein.

2. After six o'clock p.m. of the Saturday preceding the first Monday in March in any year, the corporate rights, privileges and powers of every domestic corporation which has failed to pay said tax and money penalty shall, from and after said hour of said day, be suspended, and incapable of being exercised for any purpose or in any manner, except to defend any action brought in any court against such corporation, until said tax with all accrued penalties, and all taxes and charges due the state under the corporation license act are paid as hereinafter provided. The right and privilege of every foreign corporation to transact intrastate business in this state shall, for failure to pay said tax and money penalty, be forfeited at said hour of said day, and the controller shall make a record of such forfeiture. In the case of foreign corporations such forfeiture may be relieved and the corporation's privilege to transact intrastate business in this state restored in the manner hereinafter provided. After said hour of said day and until such taxes, penalties and charges are paid, every person who attempts or purports to exercise any of the rights, privileges or powers of any delinquent corporation, or, who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business was

Suspension and forfeiture of corporate powers.

Report of secretary of state.

Duty of controller.

Duty of clerks and recorders.

Copies, evidence of what.

Revivor by foreign corporation.

Penalty for exercising corporate powers after suspension or forfeiture.

Contracts void.

Relief from forfeiture or suspension.

Certificate of revivor.

Recordation.

Duty of clerk and recorder.

Controller to sue for delinquent taxes.

May attach.

Service of summons.

Right of defense.

Payment of tax.

Assessment roll evidence of what.

had or occurred. Every contract made in violation of this section is hereby declared to be void.

3. All corporate powers, rights and privileges suspended, or forfeited may be revived and restored to full force and effect by the payment of all accrued taxes and penalties due to the state under sections 3664a, 3664b, 3604c, and 3664d of this code and the corporation license act. In case the application for such revivor and restoration is not made during the year in which such suspension of forfeiture occurred, such application shall not be granted nor a certificate of revivor issued to such corporation until there is paid to the controller in addition to said tax and money penalty due the state under said sections of this code for the year in which such suspension or forfeiture occurred, a sum of money equal to the tax, without penalty, imposed under the provisions of said sections of this code during the year in which such suspension or forfeiture occurred, for each year succeeding said year in which such suspension or forfeiture occurred. Upon payment of all such taxes and penalties, and upon payment of all other taxes due the state under the corporation license act of this state, the state controller shall issue a certificate under his seal evidencing such payment and restoration, which certificate, when recorded in the office of any county recorder shall constitute a release of all existing liens for such taxes upon the property of such corporation. Each county recorder shall keep an index of all such controller's certificates recorded by him. Upon presentation of such controller's certificate of revivor to any county clerk said officer shall make a record thereof in his office in a book kept for such purpose. The record so made by said county clerk shall be *prima facie* evidence of the restoration to such corporation of all previously suspended or forfeited rights, powers and privileges unless it appears from the records in the office of such county clerk or of the secretary of state that subsequent to the date of such certificate of revivor the powers of said corporation have been suspended or its right to do intra-state business forfeited.

4. The controller may, on or before the thirtieth day of April next following said delinquency and suspension or forfeiture, bring an action in a court of competent jurisdiction in the county of Sacramento in the name of the people of the State of California, to collect any delinquent taxes, together with any penalties, or costs, which have not been paid in accordance with the provisions of this code and appearing delinquent upon the record of assessments for state taxes hereinbefore mentioned.

The attorney general must prosecute such action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. In such action a writ of attachment may be issued, and no bond or affidavit previous to the issuing of said attachment is required.

In the case of companies whose right to do business has been forfeited or corporate powers suspended, service of summons may be made upon the persons provided for by law to be served as agents or officers of any of such companies and such persons shall be deemed to be the agents of such companies for all purposes necessary in order to prosecute such action. In the case of corporations whose powers have been suspended, the persons constituting the board of directors thereof shall have the power and right to defend such action. Payment of the taxes and penalties, or amount of the judgment recovered in such action must be made to the state treasurer. In such actions the record of assessments for state taxes, or a copy of so much thereof as is applicable in said action, duly certified by the controller, or by the secretary of the state board of equalization, showing unpaid taxes against any company, person or association assessed by the state board of equalization, is *prima facie* evidence of the assessment upon

the property and franchises, the delinquency, the amount of the taxes, penalties, and costs due and unpaid to the state, and that the company, person, or association is indebted to the people of the State of California in the amount of taxes and penalties therein appearing unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3669d. 1. Any corporation which has heretofore failed to pay any tax and penalty imposed under the provisions of section fourteen, article thirteen, of the constitution, and chapter three hundred thirty-five, Statutes 1911 and amendments thereof, and for such nonpayment suffered a forfeiture of the charter of such corporation or of its right to do business in this state, may be relieved of such forfeiture, or may be restored to its right to do business in this state, upon making application therefor in writing and paying the tax and penalties for nonpayment of which such forfeiture occurred. Application for restoration, under the provisions of this section, shall be made in writing, shall be signed by four-fifths of the surviving trustees or directors of said corporation, duly verified by said trustees or directors, and filed with the state controller. In case such application for revivor is made in any year other than the year in which such forfeiture occurred then upon payment of twice the amount of the tax and penalty due the state for the year in which such forfeiture occurred, together with the amount of the license fee due the state under the corporation license tax act for the year in which such forfeiture occurred and for the year in which such revivor is sought, the state controller shall issue a certificate of revivor to such corporation, and thereupon such corporation is revived and its powers restored to full force and effect.

The revivor of a corporation under the provisions of this section shall without prejudice to any action or proceeding, defense or right, which has occurred by reason of the original forfeiture.

2. In case the name of any corporation which has suffered a forfeiture under the provisions of chapter three hundred thirty-five, Statutes of 1911 or amendments thereof, has been adopted by any other corporation since the date of said forfeiture, or in case any corporation has adopted subsequent to such forfeiture any name so closely resembling the name of such reviving corporation as will tend to deceive, then such reviving corporation shall be entitled to a certificate of revivor pursuant to the terms of this section only upon the adopting by such corporation seeking revivor of a new name, and in such case nothing in this section contained shall be construed as permitting such reviving corporation to carry on any business under its former name. Such reviving corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state, and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name as the case may be. The secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state and which has not suffered a forfeiture under either of the acts in this section first above mentioned, or to take or use a name so closely resembling the name of any corporation heretofore organized in this state as will tend to deceive.

Revivor of charter forfeited on and prior to March 3, 1917.

Application, how made.

What taxes to be paid.

Without prejudice.

Resumption of former name, when permitted.

Duty of secretary of state.

C. C. P. not applicable.

The provisions of title nine, part three of the Code of Civil Procedure, in so far as they conflict with this section of this code are not applicable to corporations seeking revivor under this section. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

Powers and duties of state board:

3669e. In addition to the powers and duties prescribed elsewhere in this code, it is the duty of the state board of equalization, and the said board shall have power, for carrying into effect the provisions for assessments under section fourteen of article thirteen of the constitution of this state:

(1) Prescribe forms,

1. To prescribe the forms upon which the reports required by sections three thousand six hundred sixty-five *c*, three thousand six hundred sixty-six *b* and three thousand six hundred sixty-seven of this code shall be made.

(2) Inspect property,

2. Whenever deemed necessary, to visit as a board, or by the individual members thereof, or to send its secretary or duly appointed representative to any portion of this state for the purpose of inspecting property and learning the value thereof, and of collecting information to enable it to justly assess and levy the taxes provided for as aforesaid.

(3) Summon public officials,

3. To call before it, or any member thereof, or before its secretary or duly appointed representative on such visit, any public official, and to require him to produce any public record, papers or documents in his custody.

(4) Issue subpoenas,

4. To issue subpoenas for the attendance of witnesses or the production of books before the board, or any member thereof; which subpoenas must be signed by a member of the board and may be served by any person.

(5) Require attendance of witnesses and production of books,

5. To require any person having knowledge of the business of any of the companies mentioned in section fourteen of article thirteen of the constitution of this state, or having the custody of the books and accounts of such companies, to attend before the board or any member thereof, or before the secretary or the duly appointed representative of said board and bring with him for inspection any books, or papers, of such company in his possession or under his control, and to testify under oath touching any matter relating to the assessment to be made under the provisions of the constitution aforesaid. A member of the board, its secretary, or duly appointed representative is authorized to administer such oath.

(6) Examine books and accounts,

6. Said board of equalization is hereby authorized and empowered to examine the books and accounts of all companies required by law to report to it and to employ an expert accountant or accountants to assist in the examination of the books and accounts of any such companies when in the judgment of said board the exigencies of the case may so require.

(7) Unlawful for members or employees to divulge information.

7. It shall be unlawful for any member or ex-member of the state board of equalization, or for any agent employed by it, or for the controller, or ex-controller, or for any person employed by him or for any person who may at any time have obtained such knowledge from any of the foregoing officers or persons, to divulge or make known in any manner whatever not provided by law, any of the following items of information concerning the business affairs of companies reporting to the said board:

(a) Any information concerning the business affairs of any company which is gained during an examination of its books and accounts or in any other manner, and which information is not required to be reported to the state board of equalization in the reports or statements provided for in paragraphs numbered one to twelve of section three thousand six hundred sixty-five *c* and paragraphs numbered one to ten of section three thousand six hundred sixty-seven of this code.

(b) Any information, other than the assessment and the amount of taxes levied, obtained by the state board of equalization in accordance with the provisions of sections three thousand six hundred sixty-five *c* and three thousand six hundred sixty-seven of this code, from any company other than any of those enumerated in sections three thousand six hundred sixty-four *a*, three thousand six hundred sixty-four *b* and three thousand six hundred sixty-four *c* of this code.

(c) Any particular item or items of information relating to the disposition of its earnings contained in the report of a quasi-public corporation which any such corporation may, by written communication specifying the items and presented at the time when it files its report, request shall be treated as confidential.

Provided, however, that the governor may authorize examination of such reports by other state officers, in which event the information obtained by such officer shall not be made public, and he may also direct that any of the information herein referred to be made public, in which event it shall no longer be unlawful to divulge or make known the same.

Any violation of the provisions of subdivision seven of this section shall be a misdemeanor and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or both, at the discretion of the court. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3670. On the second Monday in August of each year the auditor of each county must report to the state board of equalization, in addition to the items required to be so reported by him under section three thousand seven hundred twenty-eight of this code, the value of each piece of real estate other than mortgage interests therein belonging to each bank in his county as assessed and equalized for purposes of county taxation.

Whenever the state board of equalization is satisfied after investigation that any county assessor, or board of equalization, has assessed any real estate belonging to any bank above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said bank, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county affected thereby as the said state board shall deem reasonable, equalize the assessed value of such real estate and shall upon completion of said equalization issue an order to said assessor or board of equalization and to the county auditor of the county in which said real estate is located, fixing the assessed value of said real estate.

The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county taxes, of such real estate, and the sole basis of taxation upon such real estate for county taxes.

A copy of the order certified by the secretary of the state board of equalization shall be prima facie evidence of the regularity of all proceedings of the board resulting in the action which is the subject matter of the order. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 71); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 442); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 318); took effect immediately. Repealed and added May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

State board
to equalize
assessments
of real
estate of
insurance
companies.

Notice,
to whom.

Equalized
value.

Assessors to
segregate on
assessment
roll:

(1) Assess-
ment of
railroads as
made by
state board.

(2) Assess-
ments of
public
service
corpora-
tions'
property
subject to
bond tax.

Duplicate to
be sent to
state board.

State board
to equalize
assessments
made for
bond
purposes.

3670a. The state board of equalization shall immediately after the county and city assessments have been completed, ascertain the value of any real estate belonging to any insurance company as assessed and equalized for purposes of county and of city taxation.

Whenever the state board of equalization is satisfied after investigation that any county, city and county, city, or district assessor, or board of equalization, has assessed any real estate belonging to any insurance company above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said insurance company, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county or the proper officer of the city affected as the board shall deem reasonable, equalize the assessed value of such real estate and shall upon the completion of said equalization, issue an order to said assessor or board of equalization and to the county, city and county, city, or district auditor or clerk of the county, city and county, city, or district in which said real estate is located, fixing the assessed value of said real estate.

The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county, city and county, city, or district taxes, of such real estate, and the sole basis of taxation upon such real estate, for county, municipal and district taxes.

A copy of the order certified by the secretary of the state board of equalization shall be *prima facie* evidence of the regularity of all proceedings of the board resulting in the action which is the subject matter of the order. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3670b. Each county, city and county, city, and district assessor must segregate on his assessment roll, as directed by the state board of equalization:

1. The assessments made by the state board of equalization, and apportioned to the county, city and county, city, town, township, or district, upon the franchises, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state under the provisions of the Political Code as the same existed and were in force on the seventh day of November in the year one thousand nine hundred ten; and

2. The assessments made by said assessors of any other property enumerated in subdivisions (a), (b), and (d) of section fourteen of article thirteen of the constitution of this state, which is located in the county, or city and county, or any city, town, township, or district in which it is subject to taxation for paying the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township, or district prior to the eighth day of November in the year one thousand nine hundred ten, as provided in subdivision (e) of section fourteen of article thirteen of the constitution of this state.

Immediately upon completion of the assessment and equalization of property for the purposes of taxation in each year the auditor or clerk of each county, city and county, city, town, or district must transmit to the state board of equalization a duplicate of that part of the assessment roll containing the assessments and apportionments referred to in paragraphs one and two of this section.

Whenever the state board of equalization is satisfied after investigation that any county, city, or other assessor, or board of equalization, has assessed for taxation to pay the principal and interest of any bonded indebtedness created and outstanding by any county, city and county,

city, town, township, or district prior to the eighth day of November in the year one thousand nine hundred ten, as provided in subdivision (e) of section fourteen of article thirteen of the constitution of this state, any of the property taxed exclusively for state purposes as provided in subdivisions (a), (b) and (d) of section fourteen of article thirteen of the constitution of this state, or has assessed for purposes of county, city and county, city, or district taxation the property other than the franchise of any company taxable for a franchise under subdivision (d) of said section and article of the constitution, above its full cash value and has thereby unjustly reduced the amount of taxes due the state on such property, said state board shall, under such rules of notice to the clerk ^{Notice,} of the board of supervisors of the county, or city and county, or to the ^{to whom.} city clerk of the city, affected thereby as the board shall deem reasonable, equalize the assessed value of such property, and shall issue an order to said assessor or board of equalization and to the county or city auditor or clerk of the county, city and county, or city in which the property is located, fixing the assessed value of such property.

The value so equalized and assessed, and no other, shall be deemed the ^{Equalized} value of said property, and its assessment for taxes levied to pay the principal and interest of any such outstanding bonded indebtedness, and in the case of companies taxable for a franchise under said subdivision (d) of said section and article of the constitution shall be deemed the value of the said property, and its assessment for taxes for county, city and county, municipal and district purposes.

When making the tax levy and fixing the rates of taxation for county, city and county, city, town, township, or district purposes, the board of supervisors of any county, or city and county, and the corresponding authority in any city, having bonded indebtedness issued and outstanding on the eighth day of November in the year one thousand nine hundred ten, shall fix the tax rate for such bonded indebtedness separate and apart from all other tax rates, whether for subsequent bonded indebtedness or for other purposes.

The county, city and county, or city auditor or clerk shall extend on the assessment roll against the assessments segregated as herein provided, the taxes necessary to pay the principal and interest of said bonded indebtedness at the same rate as said taxes for payment of principal and interest of said outstanding bonded indebtedness shall be levied upon the other classes of property within the same county, city and county, city, town, township, or district, and the amount of each such taxes shall be certified by said auditor or clerk to the controller and the amount so certified shall then be credited by the controller to the county, city and county, city, town, township, or district to which it is due; and said amount shall be paid by said controller to the treasurer of such county, or city and county as provided in section three thousand six hundred seventy *c* of this code, and upon such payment said treasurer shall forthwith certify such fact to the tax collector who shall thereupon mark upon the assessment roll the date of payment and the words "paid by the state treasurer." The city clerk or auditor shall in the certificate mentioned in this paragraph also state the date when taxes in such city shall become delinquent. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3670c. 1. The controller shall out of the taxes collected by him under the provisions of section fourteen of article thirteen of the constitution of this state and the provisions of the sections of this code applicable thereto, credit to the fund created by an act of the thirty-ninth session of the legislature entitled: "An act appropriating money for the bond debts.

purpose of payment of that part of the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district on the eighth day of November in the year one thousand nine hundred ten, which is provided for in section fourteen of article thirteen of the constitution of this state, and as provided in an act of the thirty-ninth session of the legislature entitled 'An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations for the benefit of the state, all relating to revenue and taxation,'" or any act or acts amendatory thereof or supplementary thereto, the money due to each county, city and county, city, town, township, or district on account of taxes to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, on the eighth day of November in the year one thousand nine hundred ten.

Controller
to settle
in October
and March.

2. The controller shall in the months of October and March in each year settle with the treasurer of each county and city and county for the money collected by said controller under this section, for the moneys due said county or city and county and the townships and districts within such county or city and county, in the same manner as settlements are made between the county or city and county treasurers and the controller as provided for in section three thousand eight hundred sixty-six of this code.

Settlement
with cities
and towns.

3. The controller shall at the same times, settle with each city and town for the moneys due such city or town for the purposes mentioned in this section, and when ready for such settlement shall notify the city or town treasurer of the amount of money due the city or town for said purposes, and that upon receipt of proper authority so to do, he will forward to said city or town treasurer a warrant for the amount thereof; *provided, however,* that upon receipt of notice from any such city or town treasurer that any bond issue matures for principal or interest before the date of such settlement, which notice shall state the amount thereof due from the state and the date of maturity, and that said amount due from the state is required in order to pay the same, the said controller must, before said date of maturity, forward his warrant to such city or town treasurer in the manner above provided for the amount ascertained by him to be due. The treasurer of the county or city and county shall forthwith, upon receipt by him of the moneys so hereinbefore directed to be paid by said controller, credit the amount so received by him to the county, city and county, township or district, respectively entitled thereto, and pay the same in the manner provided by law.

Excess paid
by state.

4. Any excess paid by the controller to a county, city and county, city, town, or to a county or city and county or any township or district, over and above the state's share of the amount actually expended by such county, city and county, city, town, township or district, to pay the interest and principal of said bonded indebtedness in any year, shall be repaid to the state in such manner as the controller shall direct. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

State to
reimburse
counties.

3671. Until the year one thousand nine hundred eighteen the state shall reimburse any and all counties which sustain loss of revenue by the withdrawal of railroad property from county taxation for the net loss in county revenue occasioned by the withdrawal of railroad property from county taxation in the manner, at the times, and in the amounts specified

in an act of the thirty-ninth session of the legislature entitled "An act to provide for the reimbursement of counties in this state which sustain net loss of revenue by the withdrawal of railroad property from taxation, under the provisions of section fourteen of article thirteen of the constitution of this state," or any act or acts amendatory thereof or supplementary thereto. (1917.)

History: Added March 9, 1883 (Statutes 1883, p. 71); took effect immediately. Amended March 13, 1909 (Statutes 1909, p. 359); took effect sixty days from passage. Repealed and added May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3671a. The provisions of section three thousand eight hundred seventy-six of the Political Code shall not apply to the settlements made with the state treasurer under sections three thousand six hundred seventy-e and three thousand six hundred seventy-one of this code, but the county board of supervisors may if it deem necessary allow the county treasurer the actual expenses incurred in collecting the money due the county from the state. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3671b. The board of supervisors of each county shall in the month of September of each year determine the amount of loss to each district in the county where loss is occasioned in such district by the withdrawal from local taxation of property taxed for state purposes only, and in the month of December next thereafter shall reimburse such district from the general funds of the county for one-half of such loss, and in the month of May next thereafter shall reimburse such district from the general fund of the county for the remaining one-half of such loss. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3671c. Any tax required to be levied for state purposes as provided in subdivision (e) of section fourteen of article thirteen of the constitution as amended the eighth day of November in the year one thousand nine hundred ten, to meet any deficiency in the state revenue, shall be assessed, levied and collected on all property in the state, not exempt from taxation including the classes of property enumerated in section fourteen of article thirteen of the constitution of this state, under the provisions of the Political Code relating to the assessment, levy and collection of state and county taxes as said provisions were in force on the seventh day of November in the year one thousand nine hundred ten. (1917.)

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

3671d. All laws in force prior to the eighth day of November in the year one thousand nine hundred ten, relating to taxation, in so far as said laws may be necessary for the assessment, levy, and collection of state, county, city and county, municipal or district taxes, or in so far as said laws may be necessary for the assessment, levy and collection of the taxes for state purposes, on all the property in the state, not exempt from taxation, to meet a deficiency in the revenues for the support of

Taxes for deficiency and bond purposes.

the state government, or to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township, or district, both as provided in subdivision (e) of section fourteen of article thirteen of the constitution as amended on the eighth day of November in the year one thousand nine hundred ten shall be and remain, for such purposes, in full force and effect.

History: New section. Added May 11, 1917 (Statutes 1917, p. 336); in effect immediately.

NOTE.—Sections 38 and 39 of chapter 214, Laws of 1917, by which sections 3664 to 3671d were added to the Political Code, are as follows:

SEC. 38. This act is a revision of and substitute for the act entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies for the benefit of the state, all relating to revenue and taxation," approved April 1, 1911, and amendments thereof; *provided, however*, that nothing herein contained shall affect any tax heretofore levied or assessed in accordance with the provisions of said act and amendments thereof; *and provided, further*, that all laws in force prior to the taking effect of this act and providing for the levy and collection of such taxes shall, for the purpose of the collection of such taxes, remain in full force and effect.

SEC. 39. This act, inasmuch as it provides for a tax levy, shall, under the provisions of section one of article four of the constitution, take effect immediately.

Disposition of Old Reports.

CHAPTER 59.

An act authorizing the state board of equalization to destroy by fire certain reports and other documents.

[Approved April 13, 1915.]

The people of the State of California do enact as follows:

SECTION 1. All reports for state taxation, including copies of operative assessment rolls of the several cities, counties, and cities and counties, made to and filed with the state board of equalization under the provisions of an act entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the State of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies, for the benefit of the state, all relating to revenue and taxation," approved April 1, 1911, or under the provisions of any act amendatory of said act, shall be retained and kept on file by said board for a period of four years from the time of the receipt thereof, and after the elapse of said period may be destroyed by fire. [In effect August 8, 1915.]

Assessment of Railroads by State Board of Equalization.

NOTE.—The following sections of the Political Code, 3664 to 3671, while repealed and superseded by sections bearing the same numbers, under section 14 of article XIII of the constitution are still operative for the collection of bond-refund taxes and deficiency taxes (if a deficiency should be declared), and are inserted herein for guidance of officials for said purposes only.

3664. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person, or association of persons, owning or operating any railroad in more than one county in this state, shall, on or before the first Monday in April of each year, furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year:

1. The whole number of miles of railway in the state, and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association;

2. The value of the roadway, roadbed, and rails of the whole railway, and the value of the same within the state;
3. A general description of the right of way;
4. The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railway, including the part without the state;
5. Number, kind, and value of rolling stock owned and operated in the state;
6. Number, kind, and value of rolling stock used in the state, but owned by the party making the returns;
7. Number, kind, and value of rolling stock owned, but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railways.

Also showing in detail for the year preceding the thirtieth day of June.

1. The gross earnings of the entire road;
2. The gross earnings of the road in the state, and, where the railway is let to other operators, how much was derived by the lessor as rental;
3. The cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;
4. Net income for such year, and amount of dividend declared;
5. Capital stock authorized;
6. Capital stock paid in;
7. Funded debt;
8. Number of shares authorized;
9. Number of shares of stock issued;
10. Any other facts the state board of equalization may require;
11. A description of any part or portion of such railroad which may be in possession and control of any other railroad company or corporation, and operated by such other corporation under a lease or other contract;
12. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate of any corporation or association of persons operating in this state any portion of a line of railroad owned by and belonging to some other corporation or association, which runs in more than one county, shall make the same statement as is herein required to be made by the foregoing provisions of this section by the owner of such railroad;
13. A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall once have been given, no other annual description thereafter is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the corporation, person, or association giving the description. No assessment is invalid on account of a misdescription of the railway, or the right of way for the same.

If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

3665. The state board of equalization must meet at the state capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the first Monday in August. At such meetings the board must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county, but franchises derived from the United States shall not be assessed. Assessments must be made to the corporation, persons, or association of persons owning the same. If any portion of any railroad less than the whole is operated by some corporation or association of individuals other than the owner of such railroad, under lease or other contract, and such portion so operated runs in more than one county, the value of such part or portion of such railroad shall be assessed separate and apart from the balance of said railroad, and the board shall assess the roadway, roadbed, and rails of such portion of said railroad, together with the rolling stock used thereon by the corporation or association of individuals operating the same. The depots, stations, shops, and buildings erected upon the space covered by the right of way, and all other property owned by such person, corporation, or association of persons, are assessed by the assessor of the county wherein they are situate. Within twenty days after the first Monday of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties. The board must also, within said time transmit, by mail, to the county auditor of each county, or city and county, to which such apportionment shall have been made, a statement showing the length of the main track of such railway within the county, or city and county, with a description of the said track within the county, or city and county, including the right of way, by metes and bounds, or other description sufficient for identification (but it shall not be necessary to state the variable width of such right of way), the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and other rolling stock of such railway within the state, and the amount apportioned to the county, or city and county. The auditor must enter the statement on the assessment roll

or book of the county, or city and county, and where the county is divided into assessorial townships or districts, then on the roll or book of any township or district he may select, and enter the amount of the assessment apportioned to the county, or city and county, in the column of the assessment book or roll, as aforesaid, which shows the total value of all property for taxation, either of the county, city and county, or such township or district. On the third Monday in September, the board of supervisors must make, and cause to be entered in the proper record book, an order stating and declaring the length of main track of the railway assessed by the state board of equalization within the county, the assessed value per mile of such railway, the number of miles of track, and the assessed value of such railway lying in each city, town, township, school and road district, or lesser taxation district in the county, or city and county, through which such railway runs, as fixed by the state board of equalization, which shall constitute the assessment value of said property for taxable purposes in such city, town, township, school, road, or other district; and the clerk of the board of supervisors must transmit a copy of each order or equalization to the city council, or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, township, school, road, and lesser taxation districts, respectively. If the owner of a railway assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, under the provisions of section three thousand six hundred and ninety-two of the Political Code, between the first Manday in August and the first Monday in September, apply to the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it so as to equalize the same with the assessment of other property in the state. If the board shall increase or lower any assessment previously made by it, it must make a statement to the county auditor of the county affected by the change in the assessment of the change made, and the auditor must note such change upon the assessment book or roll of the county, as directed by the board.

3666. The state board of equalization must prepare each year a book, to be called "record of assessments of railways," in which must be entered each assessment made by the board, either in writing or by both writing and printing. Each assessment so entered must be signed by the chairman and secretary. The record of the apportionment of the assessments made by the board to the counties, and cities and counties, must be made in a separate book, to be called "record of apportionment of railway assessments." In such last described book must be entered the names of the railways assessed by the board, the names of the corporations to which, or the name of the person or association to whom was assessed each railway in the state, the number of miles thereof in each county, or city and county, the total assessment of the franchise, roadway, roadbed, rails, and rolling stock, for purposes of state taxation, and the amount of the apportionment of such total assessment to each county, and city and county, for county, or city and county, taxation. Before the third Monday in September of each year, the secretary of the state board of equalization must prepare and transmit to the controller of state duplicates of the "record of assessment of railways," and "record of apportionment of railway assessments," each certified by the chairman and secretary of the board, and to be known, respectively, as "duplicate record of assessment of railways" and "duplicate record of apportionment of railway assessments." In the last-named duplicate all necessary appropriate columns must be added, in which the controller must enter the amount of taxes in installments due the state upon the whole assessment, by each corporation, person, or association, and the amount of taxes, in installments, due each county, or city and county, upon the assessment apportioned to each county, or city and county, by each corporation, person, or association. The two duplicates constitute the warrant for the controller to collect the state and county, and city and county taxes levied upon such property, assessed by the board, and the amount of the apportionment of the assessment to each county, and city and county, respectively.

3667. When the board of supervisors of each county, and city and county, to which the state board of equalization has apportioned the assessment of railways, shall have fixed the rate of county, or city and county, taxation, the clerk of the board of supervisors must, within three days after such rate has been fixed, transmit by mail, postage paid, to the controller, in such form as the controller shall direct, a statement of the rate of taxation levied by the board of supervisors for county, or city and county, taxation. If the clerk fails to transmit such statement in the time herein provided for, he shall forfeit to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the controller. On or before the second Monday of October, the controller must compute and enter in separate money columns, in the "duplicate record of apportionment of railway assessments," the respective sums, in dollars and cents, rejecting fractions of a cent, to be paid by the corporation, person, or association liable therefor, as the state tax upon the total amount of the assessment, and the county, or city and county, tax upon the apportionment of the assessment to each county, and city and

county, of the property assessed to such corporation, person, or association named in said duplicate record.

3668. Within ten days after the second Monday in October, the controller must publish a notice for two weeks in one daily newspaper of general circulation at the state capital, and in two daily newspapers of general circulation published in the city of San Francisco, specifying:

1. That he has received from the state board of equalization the "duplicate record of assessments of railways," and the "duplicate record of apportionment of railway assessments."

2. That the taxes on all personal property and one-half of the taxes on all real property are now payable, and will be delinquent on the last Monday in November next, at six o'clock p.m., and that unless paid to the state treasurer at the capitol, prior thereto, five per cent will be added to the amount thereof, and unless so paid on or before the last Monday in April next, at six p.m., an additional five per cent will be added to the amount thereof. That the remaining one-half of the taxes on all real property will be due and payable at any time after the first Monday in January next, and will be delinquent on the last Monday in April next, at six o'clock p.m., and that unless paid to the state treasurer, at the capitol, prior thereto, five per cent will be added to the amount thereof. On the last Monday in April of each year, at six o'clock p.m., all unpaid taxes are delinquent, and thereafter there must be collected by the state treasurer or other proper officer, an addition of ten per centum upon those taxes which became delinquent the preceding November, and have not been paid, prior to the said time, on the last Monday in April of each year, and an addition of five per centum upon all taxes for the preceding year, which became delinquent on the said last Monday in April, which sum, when collected, must be set aside by the treasurer as a fund with which to pay the contingent expenses of actions against any delinquents, the said expenses to be audited by the board of examiners, and any surplus remaining shall go into the general school fund of the state. When any taxes are paid to the state treasurer, by order of the controller, upon assessments made and apportioned by the state board of equalization, the controller must forthwith notify the auditor and treasurer, respectively, of each county, and city and county, that such taxes have been paid, and of the amount thereof to which each county, and city and county, interested is entitled. The state's portion of the taxes must be distributed by the treasurer to each fund entitled thereto, and the portion belonging to the counties, and cities and counties, must be placed in a fund, to be called "railway tax fund," to the credit of each county, and city and county, entitled thereto. When any taxes are placed in the "railway tax fund" to the credit of a county, or city and county, the controller, at the next settlement with the controller by the treasurer of such county, or city and county, must draw and deliver to such treasurer his warrant upon the state treasurer for the amount in the fund to the credit of such county, or city and county.

3669. Each corporation, person or association assessed by the state board of equalization must pay to the state treasurer, upon the order of the controller, as other moneys are required to be paid into the treasury, the state and county and city and county taxes each year levied upon the property so assessed to it or him by said board. Any corporation, person or association dissatisfied with the assessment made by the board, upon the payment of the taxes, due upon the assessment complained of, and the percentage added, if to be added, on or before the first Monday in June, and the filing of notice with the controller of an intention to begin an action, may, not later than the first Monday in June, bring an action against the state treasurer for the recovery of the amount of taxes and percentage so paid to the treasurer, or any part thereof, and in the complaint may allege any fact tending to show the illegality of the tax, or of the assessment upon which the taxes are levied, in whole or in part. When any person, corporation or association has made payment of any of the taxes, penalties, percentages, or costs herein referred to, which have been subsequently adjudged illegal, and still remain in the hands of the state treasurer such person, corporation or association shall be entitled to a refund thereof, although the payment of such taxes, penalties, percentages and costs may not have been made under protest, nor a notice filed with the controller of an intention to begin an action to recover the same, as hereinbefore provided. And in case of failure or refusal by the state treasurer to pay the same to such person, corporation or association upon its demand, an action may be brought against the state treasurer for the recovery of the amount of taxes and percentage so paid to the treasurer or any part thereof. Whenever under the provisions of this section an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer within ten days after the complaint has been filed, and the treasurer has thirty days within which to demur or answer. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento. The attorney general must defend the action. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. If the final judgment be against the treasurer, upon the presentation of a certified copy of such judgment to the controller he shall draw his warrant upon the state treasurer, who must pay to the plaintiff the amount of the taxes so declared to have been illegally collected; and

the cost of such action, audited by the board of examiners, must be paid out of any money in the general fund of the treasury, which is hereby appropriated, and the controller may demand and receive from the county, or city and county interested, the proportion of such costs, or may deduct such proportion from any money then or to become due to said county, or city and county. Such action must be begun on or before the first Monday in June of the year succeeding the passage of this act in the case of taxes heretofore paid, and on or before the first Monday in June of the year succeeding the year in which the taxes were levied and a failure to begin such action is deemed a waiver of the rights of action.

3670. Within sixty days after the first Monday in June of each year, the controller must begin an action in the proper court, in the name of the people of the State of California, to collect the delinquent taxes upon the property assessed by the state board of equalization; such suit must be for the taxes due the state, and all counties, and cities and counties, upon property assessed by the board of equalization, and appearing delinquent upon the "duplicate record of apportionment of railway assessments." The provisions of the Code of Civil Procedure relating to pleading, proofs, trials, and appeals, are applicable to the proceedings herein provided for. In such action, should a writ of attachment be demanded and issued, no bond nor affidavit previous to the issuing of such attachment is required. If in such action the plaintiff recover judgment, there shall be included in the judgment as counsel fees, and in case of judgment of taxes, after suit brought but before judgment, the defendant must pay as counsel fees such sum as the court may determine to be reasonable and just. Payment of the taxes, or the amount of the judgment in the same, must be made to the state treasurer. In such actions the "duplicate record of assessment of railways," and the "duplicate record of apportionment of railway assessments," or a copy of them, certified by the controller, showing unpaid taxes against any corporation, person, or association, for property assessed by the state board of equalization, is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of the taxes due and unpaid to the state, and counties, or cities and counties therein named, and that the corporation, person, or association is indebted to the people of the State of California in the amount of taxes, state and county, and city and county, therein appearing unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

3671. The assessment made by the county assessor, and that of the state board of equalization, as apportioned by the boards of supervisors to each city, town, township, school, road, or other district in their respective counties, or cities and counties, shall be the only basis of taxation for the county, or any subdivision thereof, except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect. All taxes on railroad property imposed upon townships, road, school or other local districts, unless otherwise provided by law, shall be collected by the county tax collector in the same manner and at the same time as county taxes.

CHAPTER IV.

EQUALIZATION OF TAXES.

ARTICLE I. *County Boards of Equalization.*

ARTICLE II. *State Board of Equalization.*

ARTICLE I.

COUNTY BOARDS OF EQUALIZATION.

- 3672. Supervisors, when to meet to equalize assessments.
- 3673. Supervisors may increase or lower any assessment or entire roll.
- 3674. No reduction to be made unless application therefor is made.
- 3675. Board must examine applicant for reduction.
- 3676. Board may subpoena witnesses and take evidence.
- 3677. Assessor and deputies must attend sessions of board.
- 3678. Recorder to make abstract of mortgages for assessor.
- 3679. Board to use all information and direct assessments.
- 3680. Assessor and tax collector to make entry of property sold to state for taxes.
- 3681. Board may direct new assessment to be made, etc., notice to persons interested.
- 3682. Clerk of board to record all changes in assessments, etc. Oath of clerk as to correctness of record.

Supervisors,
when to
equalize
assessments.

3672. The board of supervisors of each county must meet on the first Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose, from time to time, until the business of

equalization is disposed of, but not later than the third Monday in July. (1891.)

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 444); took effect July 1, 1891.

3673. The board has power, after giving notice in such manner as it may increase or may, by rule, prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the lower entire assessment of the property contained in said roll, and make the assessment roll conform to the true value of such property in money. (1880.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 15); took effect immediately.

NOTE.—No complaint is necessary before increasing an assessment; formerly a complaint had to be made. Not so now, under our constitution. The board has plenary power over the whole subject, and can increase, after giving the notice prescribed. The board, however, can not increase or lower an entire roll. It has no power to strike off property because destroyed since first Monday in March.

3674. No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made. (1872.)

History: Original section; took effect March 16, 1872.

3675. Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry. (1872.)

History: Original section; took effect March 16, 1872.

3676. Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper. (1872.)

History: Original section; took effect March 16, 1872.

3677. During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the board. (1872.)

History: Original section; took effect March 16, 1872. (Section is based on section 23, Statutes of 1861, page 427.)

3678. To assist the assessor in the performance of his duties, the auditor must annually transmit to the assessor, within ten days after the first Monday in March of each year, a complete and true statement of all property which has been redeemed under or by virtue of any sale made to the state for delinquent taxes, together with a complete and true statement of all property sold to the state and remaining unredeemed. (1917.)

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 15); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 318); took effect

immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3679. Repealed. (1917.)

History: Original section took effect March 16, 1872. (Section is based on Section 23, Statutes of 1861, p. 427.) Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Assessor to note fact that property has been sold for taxes.

Also to be noted on all tax bills, receipts, etc.

3680. Whenever property has been sold for taxes and remains unredeemed, upon each subsequent assessment the assessor shall enter upon the assessment book, immediately after the description of the property, the fact that said property has been sold for taxes, and the date of such sale. Upon all bills or statements of or for taxes accruing on said property, subsequent to the date of said sale and prior to the redemption of said property, or the execution to the state of a deed therefor, shall be distinctly and legibly written, printed, or stamped, the words, "Sold for taxes," and also the date of such sale. (1895.)

History: Original section took effect March 16, 1872. Amended March 30, 1874 (Amendments to Codes 1873-74, p. 159); took effect sixty days from passage. Repealed March 22, 1880 (Amendments to Codes 1880, p. 17); took effect immediately. Added March 22, 1895 (Statutes 1895, p. 319); took effect immediately.

Supervisors may direct new assessment to be made.

Notice to parties interested.

3681. During the session of the board, it may direct the assessor to assess any taxable property that has escaped assessment, or add to the amount, number, or quantity of property, when a false or incomplete list has been rendered; and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the post office or express, postpaid, and addressed to the person interested, at least five days before action taken, of the day fixed when the matter will be investigated. (1897.)

History: Original section took effect March 16, 1872. Amended April 1, 1897 (Statutes 1897, p. 429); took effect immediately.

Clerk of board to record changes, alterations, etc.

Oath of clerk.

3682. The clerk of the board must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment must enter upon the assessment book all changes and corrections made by the board, and on or before the fourth Monday of July must deliver the assessment book so corrected to the county auditor, and accompany the same with an affidavit thereto affixed, subscribed by him as follows: "I, _____, do swear that, as clerk of the board of supervisors of _____ county, I have kept correct minutes of all the acts of the board touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized." (1915.)

History: Original section took effect March 16, 1872. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

VALIDATING ACT.

CHAPTER 24.

An act to confirm, validate and legalize assessments of property and taxes due thereunder entered and contained in assessment books or rolls from which assessment books or rolls the clerk of the board of supervisors and auditor omitted to attach and enter the affidavit or certificate, or both such certificate and affidavit, required by the provisions of sections three thousand six hundred eighty-two and three thousand seven hundred thirty-two of the Political Code, and to confirm, validate and legalize all sales, certificates of sale, tax deeds, or other tax conveyances issued under and based upon any such assessments and taxes.

[Approved April 1, 1915; in effect August 8, 1915.]

The people of the State of California do enact as follows:

SECTION 1. All assessments of property heretofore duly and legally assessed, entered, and contained in any assessment book or roll of any county, which said assessment book or roll is defective by reason of the omission of the clerk of the board of supervisors and the county auditor, or either or both of them, to attach and affix to said assessment book or roll the affidavit or certificate, or both such affidavit and certificate, required by the provisions of sections three thousand six hundred eighty-two and three thousand seven hundred thirty-two of the Political Code, and any and all taxes duly levied and extended upon the assessment of any property so entered and contained in any such assessment book or roll, and any sale, certificate of tax sale, tax deed, or other tax conveyance duly given and issued based upon any assessment, or tax or tax delinquency entered and contained in any such assessment book or roll, are hereby confirmed, validated and legalized, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things required by law had been properly performed, attached and affixed in the first instance.

SEC. 2. This act shall not apply to any assessment, tax, tax deed, or other tax conveyance which was or is in litigation at the time this act takes effect.

ARTICLE II.

STATE BOARD OF EQUALIZATION

- 3692. General powers of board.
- 3693. To equalize assessments, how.
- 3694. Penalty when auditor fails to forward certain statement.
- 3695. Secretary to transmit to county auditor statement of changes made by board.
- 3696. Board must levy state tax rate, and notify board of supervisors and auditor thereof.
- 3697. Penalty for refusing to obey rules and regulations of board.
- 3698. District attorney to prosecute assessor fraudulently assessing property.
- 3699. Secretary and members of board may administer oaths.
- 3700. Salaries of members of board and secretary.
- 3700a. Salary of secretary.
- 3701. Duties of secretary of board.
- 3702. Traveling and other expenses of board.
- 3703. Repealed in 1875.
- 3704. Repealed in 1901.
- 3705. State board of equalization may extend time for performance of certain official acts.

3692. The powers and duties of the state board of equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.
2. To prescribe rules and regulations, not in conflict with the constitution and laws of the state, to govern supervisors when equalizing, and assessors when assessing.
3. To make out, prepare, and enforce the use of all forms in relation to the assessment of property, collection of taxes, and revenue of this state.
4. To hold regular meetings at the state capital on the second Monday in each month, and such special meetings at any place within the state

General powers of the state board of equalization.

as the chairman may direct. At such special meetings the board may transact any and all business and perform all duties imposed upon it by law and give and enter any and all orders and decrees within its jurisdiction; *provided*, that the final action of the board in increasing or lowering a county assessment roll, or the final act in making the assessment of a railroad, shall be performed only at the state capital.

5. To meet at the state capital on the first Monday in August, and remain in session from day to day, Sundays excepted, up to and including the third Monday in August.

6. At such meeting to equalize the valuation of the taxable property of the several counties in this state for the purpose of taxation; and to this end, under such rules of notice to the clerk of the board of supervisors of the county affected thereby, as it may prescribe, to increase or lower the entire assessment roll so as to equalize the assessment of the property contained in said roll and make the assessment conform to the true value in money of the property assessed, and to fix the rate of state taxation, and to do the things provided in section three thousand six hundred ninety-three of this code.

7. Whenever deemed necessary, to visit as a board, or by the individual members thereof, or to send its secretary or duly appointed representative to, the several counties and cities for the purpose of inspecting property and learning the value thereof, and of collecting information to enable the board of equalization to equalize assessments and levy the taxes as provided by law.

8. To call before the board, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody, and to give testimony on such subjects deemed useful to the board in its investigations.

9. To issue subpoenas for the attendance of witnesses or the production of books before the board, or any member thereof; which subpoenas must be signed by a member of the board, and may be served by any person.

10. To appoint a secretary, prescribe and enforce his duties. The secretary shall hold his office during the pleasure of the board.

11. To report to the governor, biennially, a statement showing:

First—The acreage of each county in the state that is assessed.

Second—The amount assessed per acre.

Third—The aggregate value of all real estate within an incorporated city or town.

Fourth—The aggregate value of all real estate in the state.

Fifth—The kinds of personal property in each county, and the value of each kind.

Sixth—The aggregate value of all personal property in the state.

Seventh—Any information relative to the assessment of property and the collection of revenue.

Eighth—Such further suggestions as it shall deem proper.

12. To keep a record of all its proceedings.

13. To require any person having knowledge of the business of any railroad company, the assessment which is to be made by the board, or having the custody of the books, accounts, and papers of such company, to attend before the board, or any member thereof, and bring with him for inspection any books, accounts, or papers, of such company in his possession and under his control, and to testify under oath touching any matter relating to the organization or business of such company.

14. To examine the books, accounts, and papers of all railroad companies required by law to report to the board, and to employ an expert accountant or accountants to assist in the examination of the books, accounts, and papers of any company when in the judgment of said board the exigencies of the case may so require.

15. Any officer, employee, or agent of a railroad company required to report to the board, or any county officer, or witness, duly subpoenaed, who shall refuse or neglect to attend before the board, or any member thereof, or shall refuse to bring with him and submit for inspection any books, accounts or papers in his possession, custody, or control, or shall refuse to answer any questions put to him by any member of the board, touching the matters under investigation by the board, shall be deemed guilty of contempt, and may be punished by a court of competent jurisdiction, by imprisonment in the county jail, not to exceed five days, or by a fine of not to exceed five hundred dollars, or by both such fine and imprisonment. (1915.)

History: Original section took effect March 16, 1872. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 12); took effect immediately. Amended April 3, 1880 (Amendments to Codes 1880, p. 25); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 444); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 319); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended March 13, 1909 (Statutes 1909, p. 360); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

3693. When, after a general investigation by the board, the property is found to be assessed above or below its full cash value, the board may, without notice, so determine, and must add to or deduct from the valuation:

1. The real estate.
2. Improvements upon such real estate.
3. The personal property—such per centum, respectively, as is sufficient to raise or reduce it to its full cash value; *provided*, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. (1895.)

History: Original section took effect March 16, 1872. Amended March 14, 1874 (Amendments to Codes 1873-74, p. 147); took effect immediately. Repealed April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Re-enacted April 3, 1880 (Amendments to Codes 1880, p. 27); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 321); took effect immediately.

Note.—This section is inoperative, because, under the decision of *Wells, Fargo & Co. vs. The State Board of Equalization*, the board's power is restricted to lowering or increasing the county assessments as a whole.

3694. Every county auditor who fails to forward to the state board of equalization, and to the controller, the statement provided for in section three thousand seven hundred and twenty-eight, forfeits to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the state board of equalization. (1895.)

History: Original section took effect March 16, 1872. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 13); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 321); took effect immediately.

After
equalization,
secretary of
board to
transmit
statement
of changes
to county
auditor.

3695. When the equalization among the several counties is completed, the secretary of the board must transmit to each county auditor a statement of the changes made by the board in the assessment roll of the county, or in any assessment contained therein, and of the per centum to be added to or deducted from the valuation of such statement, which shall be *prima facie* evidence of the regularity of all proceedings of the board resulting in the action which is the subject-matter of the statement. (1907.)

History: Original section took effect March 16, 1872. Repealed April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Re-enacted April 3, 1880 (Amendments to Codes 1880, p. 27); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately.

State board
of equaliza-
tion to levy
state rate
of tax.

To notify
supervisors
and county
auditor of
such rate.

3696. On the third Monday in August, of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing five per cent for delinquencies in collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes. The board must immediately thereafter transmit to the board of supervisors and county auditor of each county, a statement of such rate, and upon its receipt the clerk of said board and county auditor must each, in writing, notify the state board of equalization thereof. (1915.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 147); took effect immediately. Amended March 30, 1874 (Amendments to Codes 1873-74, p. 159); took effect immediately. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 13); took effect immediately. Amended March 28, 1878 (Amendments to Codes 1877-78, p. 65); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 445); took effect July 1, 1891. Amended March 23, 1893 (Statutes 1893, p. 300); took effect sixty days from passage. Amended April 15, 1909 (Statutes 1909, p. 921); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

Penalty for
refusal to
obey rules
and regula-
tions pre-
scribed by
state board
of equaliza-
tion.

3697. Every person served with a subpoena who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the board, or to perform the duties prescribed therein, forfeits to the state five hundred dollars, to be recovered by action in the name of the board, which action may be commenced and tried in any county of the state. (1872.)

History: Original section; took effect March 16, 1872.

District
attorney to
prosecute
assessor
fraudulently
assessing
property.

3698. Whenever the state board of equalization is satisfied that the assessor or a deputy assessor of any county has knowingly, fraudulently, or corruptly assessed any property below its actual cash value, it must immediately inform the district attorney of such county in writing of the facts that may have come to its knowledge, with a request that such assessor or deputy assessor be prosecuted, and the district attorney must at once comply with such request. (1872.)

History: Original section; took effect March 16, 1872.

3699 The secretary or any member of the board may administer and Administer oaths. (1907.)

History: Original section took effect March 16, 1872. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately.

3700. The annual salary of each member of the board (except the state controller), is four thousand dollars. The annual salary of the secretary to the board is three thousand dollars. Each of said officers shall devote his entire time to the services of the state in performing the duties and acquiring the information required by this title. (1909.)

History: Original section took effect March 16, 1872. Repealed April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Re-enacted April 3, 1880 (Amendments to Codes 1880, p. 27); took effect immediately. Partly repealed March 15, 1883 (Statutes 1883, p. 374); took effect sixty days from passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended March 15, 1909 (Statutes 1909, p. 372); took effect immediately.

3700a. The annual salary of the secretary of the state board of equalization is four thousand dollars, payable monthly in the same manner as the salaries of other state officers are paid. (1917.)

History: Added May 14, 1917 (Statutes 1917, p. 473); in effect July 27, 1917.

3701. It shall be the duty of the secretary to keep an accurate record of the proceedings of the board in a book specially provided for such purpose. When required by the board or the chairman he shall visit the several counties and collect data and information relative to the assessment of property therein, or the railway property therein, and consult and advise with all officers charged with enforcement of the revenue laws, and report such data and information to the board. To prepare, biennially, the report of the board to the governor, and when printed, to distribute such report, as required by law and as directed by the board. To do and perform all other acts and things enjoined by law or required by the board. The secretary is a civil executive officer and is authorized to administer and certify oaths in any county in the state. (1917.)

History: Original section took effect March 16, 1872. Repealed April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Re-enacted March 15, 1883 (Statutes 1883, p. 374); took effect sixty days from passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3702. The members of the board and secretary are entitled to their actual traveling expenses, and for contingent clerical assistance, while traveling, incurred by them in the discharge of their duties, the amount to be audited and allowed by the board of examiners, and the sum of six thousand dollars for each fiscal year is hereby continuously appropriated out of the general fund of the state treasury, to pay the same.

Salaries of board and secretary.

Salary of secretary.

Traveling and other expenses of board.

Secretary of state to supply room, stationery, etc.

The secretary of state must assign an office for the board in the state capitol, in which must be transacted all its business, except as in its nature must be transacted elsewhere. He must supply it with stationery, fuel, light, and modern office furniture and supplies, and the superintendent of state printing must execute its orders for printing. (1907.)

History: Original section took effect March 16, 1872. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 13); took effect immediately. Amended April 3, 1880 (Amendments to Codes 1880, p. 27); took effect immediately. Amended March 8, 1887 (Statutes 1886-87, p. 56); took effect sixty days from passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately.

3703. Repealed. (1875.)

Repealed.

History: Original section took effect March 16, 1872. Repealed April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately.

Repealed.

3704. Repealed. (1901.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 321); took effect immediately. Repealed February 27, 1901 (Statutes 1901, p. 50); became a law without governor's approval; took effect immediately.

State board may extend time for performance of certain acts.

3705. The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county, extend, for not exceeding twenty days, the time fixed in this title, for the performance of any act, by the county assessor, county auditor, or county boards of equalization; *provided, however*, that in cases of conflagration or other public calamity within the state, the state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county, extend, for not exceeding forty days, the time fixed in this title for the performance of any act in this section provided; and wherever any act to be performed or required by the laws of the state to be performed, by the state board of equalization is dependent for its performance on the act of any other official or officials, which act or acts on the part of said other official or officials shall be extended under the provisions of this section, then and in that event, the state board of equalization shall have the same extension of time in which to perform the act so required of it by law, as given to said official or officials. (1906.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 322); took effect immediately. Amended June 16, 1906 (Statutes 1906-07, p. 76); took effect immediately.

CHAPTER V.

LEVY OF TAXES.

- 3713. Amount of taxes to be raised for state purposes each year.
- 3714. Supervisors to fix rate of county tax.
- 3714a. Controller to be notified of tax rate.
- 3715. Duty of certain county officials if supervisors fail to levy state rate of taxation.
- 3716. Making every tax have the effect of a judgment.
- 3717. Tax on personal property a lien on real property, etc.
- 3718. Tax on real property, and tax on improvements, a lien on both.
- 3719. Tax for school purposes.

Rate of taxation.

- 3713.** [This section is amended each session of the legislature, and fixes the amount of taxes to be raised.]

History: Original section took effect March 16, 1872. Amended April 1, 1872 (Statutes 1871-72, p. 886); took effect immediately. Amended

March 30, 1874 (Amendments to Codes 1873-74, p. 160); took effect immediately. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 60); took effect immediately. Amended April 1, 1878 (Amendments to Codes 1877-78, p. 67); took effect immediately. Amended April 16, 1880 (Amendments to Codes 1880, p. 65); took effect immediately. Amended May 12, 1881 (Statutes 1881, p. 123); took effect immediately. Amended March 31, 1883 (Statutes 1883, p. 286); took effect immediately. Amended March 12, 1885 (Statutes 1884-85, p. 100); took effect sixty days from passage. Amended March 15, 1887 (Statutes 1886-87, p. 151); took effect sixty days from passage. Amended March 19, 1889 (Statutes 1889, p. 347); took effect sixty days from passage. Amended March 31, 1891 (Statutes 1891, p. 470); took effect sixty days from passage. Amended March 23, 1893 (Statutes 1893, p. 300); took effect sixty days from passage. Amended March 26, 1895 (Statutes 1895, p. 161); took effect sixty days from passage. Amended March 31, 1897 (Statutes 1897, p. 247); took effect sixty days from passage. Amended March 28, 1899 (Statutes 1899, p. 131); took effect sixty days from passage. Amended March 23, 1901 (Statutes 1901, p. 595); took effect sixty days from passage. Amended March 20, 1903 (Statutes 1903, p. 335); took effect sixty day from passage. Amended March 18, 1905 (Statutes 1905, p. 252); took effect sixty days from passage. Amended March 22, 1907 (Statutes 1907, p. 877); took effect sixty days from passage. Amended March 25, 1909 (Statutes 1909, p. 755); took effect sixty days from passage.

NOTE.—For further tax levy acts see: Statutes 1911, p. 557; Statutes 1913, p. 1083; Statutes 1915, p. 476; Statutes 1917, p. 470.

3714. The board of supervisors of each county must on the first Tuesday after the first Monday of September of each year, fix the rate of county taxes, designating the number of cents levied for each fund on each one hundred dollars of property, and must levy the state and county taxes upon the taxable property in the county; *provided*, that it shall not be lawful for any board of supervisors of any county in the state to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this state, or of any county or municipality in this state. (1917.)

Supervisors to fix rate of county tax, and must levy state rate.
Levy for bonded indebtedness

History: Original section took effect March 16, 1872. Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately. Amended April 12, 1880 (Amendments to Codes 1880, p. 50); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 445); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 322); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915. Amended May 20, 1917 (Statutes 1917, p. 13); in effect July 27, 1917.

NOTE.—See "Tax Limitation Law," *post*.

Tax Limitation Law.

CHAPTER 729.*

An act to regulate and limit the amount that may be produced by tax levies in the aggregate by political subdivisions of this state, creating a state board of authorization, providing for the making and filing of budgets by such subdivisions, and repealing all acts and parts of acts in conflict with this act.

[Approved May 31, 1917.]

The people of the State of California do enact as follows:

SECTION 1. (a) For the purposes of this act the term "political subdivision" shall mean, refer to and include counties, cities, towns, and all other subdivisions of this state which have or shall hereafter have power to make tax levies; the term "governing body" shall mean, refer to and include the body, board, commission or council, by whatever name the same may be designated in legislative act or local charter, which has and exercises the power of a political subdivision to levy taxes therein; and the term "estimate" shall mean, refer to and include any and all estimates, statements or calculations required by legislative act or local charter to be made or prepared and filed with or submitted to a governing body for the purpose of obtaining from such governing body a levy or levies of taxes to produce all or any part of the amount of money specified therein; and the term year shall mean and refer to fiscal year.

(b) The amount produced in a preceding year or the amount to be produced in a current or ensuing year by tax levies by the governing body of any political subdivision shall be ascertained by multiplying the total assessed taxable value of each district within such subdivision by the total rate of tax levied or to be levied in such district, and the sum of these products shall be taken as the amount produced or to be produced in such political subdivision; *provided*, that from the amount produced, as so ascertained, there shall be deducted the amount by which the production of any interest or bond levy will be decreased in the current year by reason of the payment, in whole or in part, of bonds of a subdivision prior to the time of levying taxes therein for such current year, and the remainder shall be taken as the amount produced.

SEC. 2. In every case in which a maximum limit upon the rate of any tax levy permitted, directed or authorized to be made by the governing body of any political subdivision is now or may hereafter be prescribed by legislative act or charter, such maximum limit shall remain as so prescribed and shall not be construed to be increased by any of the provisions of this act.

SEC. 3. Not less than ninety days before the day prescribed by legislative act or charter for the governing body of a political subdivision to fix the rates of taxes to be levied therein, each officer thereof shall file with the governing body, in duplicate and upon a form or forms to be prescribed as hereinafter provided, a statement showing the income and expenditures of his office for the last two fiscal years immediately preceding, the estimated amount of money needed for his office for each and every purpose for the next fiscal year, and such other information as the said form or forms may call for. Such statements so filed as aforesaid shall be used by the governing body for the purpose of making up the budget of its political subdivision for the ensuing fiscal year.

The amount proposed to be produced by any special levy of taxes, and any estimate of the amount of money required or needed for any purpose filed with or submitted to the governing body of any political subdivision for the purpose of obtaining a levy or levies of taxes to produce the amount of money therein specified, may be revised and changed in whole or in part by the governing body with which the same is so filed or to which it is so submitted.

SEC. 4. A state board of authorization is hereby created for the purpose of determining whether an emergency or urgent necessity exists by reason of which any political subdivision may make tax levies that will produce an amount greater than the amount limited by section six; to prescribe the forms mentioned in section three; and to have such other powers and duties as are hereinafter vested therein. The members of the said board shall be the state controller, the chairman of the state board of control, the chairman of the state board of equalization and two other persons in the service of the state to be appointed by the governor, one of whom shall be a member of the state board of control. The members of the state board of authorization shall organize by electing a chairman and a secretary from their own number.

SEC. 5. Not less than sixty days prior to the time prescribed by legislative act or charter for the governing body of a political subdivision to determine upon and fix the rates of tax levies therein, such governing body shall file with the state board of authorization a copy of the statement theretofore filed with it by each officer as required by section three, and also, upon such form or forms as the state board of authorization may prescribe, the budget of such political subdivision for the ensuing fiscal year.

*NOTE.—This law, under the referendum provision of the constitution, has been delayed from going into effect, and will be voted upon by the people in November 1918, or at any special election called before that time.

Such budget shall show the income and expenditures of such political subdivision for the last two fiscal years immediately preceding, the estimated expenditures for each and every purpose for the ensuing fiscal year, an estimate of income for the ensuing fiscal year from sources other than taxation, the rate of each tax levy proposed to be made for such ensuing year, and such other facts and information as the state board of authorization may require.

SEC. 6. No governing body of any political subdivision shall in any year make tax levies which, in the aggregate, will produce an amount more than five per cent in excess of the amount produced by tax levies made thereby during the year immediately preceding, except as hereinafter provided.

SEC. 7. The state board of authorization shall examine such budgets, proposed tax levies and other matter filed as required by section five, and, after public hearing thereon, shall approve the proposed tax levies if the amount the same will produce will not exceed the amount limited by section six; otherwise it shall disapprove such proposed levies, giving its reasons therefor, and return them and the budget to the proper governing body to be corrected and revised by it in accordance with the reasons given, to the end that the amount that will be produced thereby shall not exceed the amount limited by section six. In correcting or revising any proposed levies or budget so returned for correction or revision the governing body shall make due provision in any event first for the principal and interest of bonded indebtedness and second for the support and maintenance of the public schools. No taxes shall be collected under any levy by the governing body of a political subdivision until after such levy shall have been approved or corrected and revised as in this section required.

SEC. 8. In case of emergency or urgent necessity which, in the judgment of a governing body requires the making of tax levies which, in the aggregate, will produce an amount more than five per cent in excess of the amount produced by tax levies made thereby in the year immediately preceding, such fact shall be set forth in the form of a special request, containing a description of such emergency or urgent necessity and a statement of the amount in dollars of the desired excess, and filed with the state board of authorization. As soon as may be after receiving such special request the state board of authorization shall publicly hear and determine the same under such rules as it may prescribe. If the state board of authorization shall be of opinion that such emergency or urgent necessity exists it shall specifically authorize the making of tax levies, which, in the aggregate, will produce such excess amount; if it shall not be of such opinion it shall so state, giving its reasons therefor; and its decision shall be final unless changed by the voters as provided in section nine.

SEC. 9. Within ten days after the date of the order or decision of the state board of authorization on any special request filed as required in the preceding section, a petition may be filed with the clerk or recording officer of the governing body of the political subdivision affected thereby, asking that a special election be called by such governing body to determine the question of whether such order or decision shall stand as final. If said petition is signed by not less than fifteen per cent of the electors of such subdivision resident therein for the period requisite to enable them to vote at a general election, the governing body with which the same is filed shall call the special election therein requested by publishing notice thereof in a daily paper, published in such subdivision, for five consecutive days before the same is held. If no daily paper is published therein, such notice shall be posted in at least fifty of the most public places in such subdivision for at least five consecutive days before the day of the election. Such notice must specify the time, place or places, and the purpose of said special election and the hours during which the polls will be kept open. Said election shall be conducted in accordance with the general election laws of this state, where applicable and not in conflict herewith. The ballots shall contain the question "Shall _____ (naming the political subdivision) make tax levies in the year _____ (naming the fiscal year) which will produce _____ dollars (naming in words and figures the total sum desired to be produced, including the exact amount of increase requested of the board of authorization, in excess of the amount produced in the year immediately preceding) more than the amount produced by all tax levies in the year _____ (naming the last preceding fiscal year)?" Under said question there shall be printed two squares, one above the other. Above the first square there shall be printed the word "yes," and above the second the word "no." Each voter shall indicate his vote by marking or stamping a cross (X) in the proper square. Every elector resident within the political subdivision for the period requisite to enable him to vote at a general election shall be entitled to vote at the election herein provided for. The votes cast shall be canvassed as expeditiously as is practicable and if not less than three-fifths of the votes cast shall be in the affirmative the governing body of the subdivision in which the election was held shall have power to make tax levies for the ensuing year which, in the aggregate, will produce the amount stated on the ballots in excess of the amount produced during the year preceding; but if the number of votes cast in the affirmative shall be less than three-fifths of all the votes cast at such election, the governing body shall not have such power. Such election must be held within fifteen days after the filing of a proper petition therefor. The result of such election, with a statement of the total number of votes cast and the total number of affirmative and negative votes, shall be forthwith recorded in the minutes of the

governing body and certified to the board of authorization. Tax levies made pursuant to the decision of an election held as provided in this paragraph shall not require approval by the state board of authorization.

SEC. 10. During the first year after the boundaries of any political subdivision are changed to include or exclude in whole or in part property theretofore included in another political subdivision, no greater amount may be produced by tax levies upon property within such new boundaries than the amount produced by tax levies thereon in the year immediately preceding, plus five per cent, without special request and authorization as provided in section eight hereof.

SEC. 11. The amount of any increase or excess, over the normal increase permitted by section six hereof, authorized by the state board of authorization after special request therefor, or by the voters as provided in section nine, shall be excluded in determining the amount that may be produced in an ensuing year without such special authorization or election.

SEC. 12. The time, manner, form, contents of and procedure on special applications and requests to the state board of authorization under this act shall be prescribed by the said board and all rules or orders prescribing the same may be modified or amended at any time. In the event any order is made by the state board of equalization under the provisions of section three thousand seven hundred five of the Political Code, the state board of authorization shall have power by order, in the event it deems it advisable so to do, to change any time requirement of this act so as to adjust the performance of duties under this act by governing bodies, and the petitioning for, publication of notice for, holding of, and certification of the results of elections held hereunder to meet any change of time so as aforesaid authorized by the state board of equalization.

SEC. 13. The percentage limitation provided for in sections six and eight shall apply to and restrict the amount produced or to be produced by the aggregate of all tax levies that the governing body of any political subdivision has or shall hereafter have power to make, or that it is duty to make, for any purpose whatsoever.

In no event shall this act be construed, either in whole or in part, to permit the governing body of any political subdivision to make a levy of taxes for any purpose at a rate higher than the rates prescribed in section two.

SEC. 14. This act shall apply only to counties and to the governing bodies thereof; *provided*, any city, city and county or other political subdivision may by resolution of its governing body declaring its intention so to do, subject such political subdivision and such governing body to all the terms, conditions, limitations and requirements hereof by filing a certified copy of such resolution with the state board of authorization. From and after the filing with the state board of authorization of a certified copy of the resolution herein provided for, the governing body so passing the same and its political subdivision shall be subject in all respects and particulars to the provisions, conditions, requirements and limitations of this act.

SEC. 15. In all cases in which levies of taxes by any political subdivision are permitted, authorized or directed to be made and the minimum limits thereof or the minimum amount or amounts that shall be raised thereby are expressed in terms of mills, cents, dollars, per cent of assessed value, or in dollars per capita or other unit, such minimum limits and each thereof are hereby expressly abrogated and abolished. All acts and parts of acts in conflict with this act are hereby repealed.

Clerk of
supervisors
to notify
controller
of rate of
county tax.

3714a. When the board of supervisors of each county, and city and county shall have fixed the rate of county, or city and county taxation, the clerk of the board of supervisors must, within three days after such rate has been fixed, transmit by mail, postage paid, to the controller, in such form as the controller shall direct, a statement of the rate of taxation levied by the board of supervisors for county, or city and county taxation. If the clerk fails to transmit such statement in the time herein provided for, he shall forfeit to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the controller. (1917.)

Penalty
for failure.

History: Added May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Action of
state board,
when equiva-
lent to levy.

3715. The action of the state board of equalization, in fixing the rate of taxation for state purposes, is, in the absence of action by the board of supervisors, a valid levy of the rate so fixed, and imposes upon the auditor, tax collector, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of supervisors had made the levy at the proper time. (1872.)

History: Original section; took effect March 16, 1872.

3716. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof. (1872.)

Tax to
operate as
a judgment
or lien
against
property.

History: Original section; took effect March 16, 1872.

3717. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year. (1880.)

Tax on per-
sonal prop-
erty a lien
on real
property.

History: Original section took effect March 16, 1872. Amended March 30, 1874 (Amendments to Codes 1873-74, p. 159); took effect sixty days from passage. Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately.

3718. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year. (1872.)

Tax on real
property and
tax on im-
provements
a lien on
both.

History: Original section; took effect March 16, 1872.

3719. Repealed. (1917.)

History: Added March 13, 1874 (Amendments to Codes 1873-74, p. 84); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 322); took effect immediately. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

CHAPTER VI.

DUTIES OF AUDITOR IN RELATION TO REVENUE.

- 3727. Auditor to enter in assessment book total values.
- 3728. Auditor to prepare statement, showing what.
- 3729. To transmit statement, where.
- 3730. Auditor to follow state board of equalization in equalizing property.
- 3731. Auditor to compute and enter taxes.
- 3732. Deliver corrected assessment book to tax collector. Auditor's affidavit.
- 3733. Repealed in 1895.
- 3734. Auditor to charge tax collector with full amount of taxes.
- 3735. Auditor to verify by oath all statements.
- 3736. Transfer of assessment book from one tax collector to another.
- 3737. Auditor to prepare certain statements; to whom forwarded.
- 3738. Auditor to furnish assessor with blank personal property tax receipts in book form.
- 3739. Auditor to furnish tax collector report of property redeemed since previous delinquent sale.

3727. The county auditor, as soon as the assessment book is delivered to him by the clerk of the board of supervisors, must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county. (1872.)

Auditor to
add and
enter total
valuations
and acreage.

History: Original section; took effect March 16, 1872.

Auditor to
prepare
duplicate
statement
showing
what.

3728. The auditor must, on or before the second Monday in August in each year, prepare from the "assessment book" of such year, as corrected by the board of supervisors, duplicate statements, showing in separate columns—

1. The number of acres of land.
2. The total value of all property.
3. The value of real estate.
4. The value of improvements thereon.
5. The value of personal property, exclusive of money.
6. The amount of money.
7. Such other information as the state board of equalization may require. (1917.)

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 446); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 322); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 429); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Reports,
to whom
mailed.

3729. The auditor must, as soon as such statements are prepared, transmit, by mail or express, one to the controller of state and one to the state board of equalization. (1872.)

History: Original section; took effect March 16, 1872.

Auditor to
follow
directions of
state board
of equaliza-
tion in
equalizing
property.

3730. As soon as the auditor receives from the state board of equalization a statement of the changes made by the board in the assessment book of the county, he must make the corresponding changes in the assessment book, by entering the same in a column provided with a proper heading in the assessment book, counting any fractional sum when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fraction of a dollar; but he shall, in all cases, disregard any action of the board of supervisors which is prohibited by section three thousand six hundred and thirty-three of this code. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 173-74, p. 147); took effect immediately. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 23); took effect immediately. Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 323); took effect immediately.

Auditor to
compute and
enter taxes.

3731. The auditor must then compute, and enter in a separate money column in the assessment book, the respective sums, in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and segregate and place in the proper columns of the book the respective amounts due in installments, as provided in section three thousand seven hundred and forty-six of this code, and foot up the column, showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the state board of equalization. (1895.)

History: Original section took effect March 16, 1872. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Amended April 3, 1880 (Amendments to Codes 1880, p. 27); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 323); took effect immediately.

3732. On or before the fourth Monday in September, he must deliver the corrected assessment book to the tax collector, with an affidavit attached thereto, and by him subscribed as follows:

"I, _____, auditor of the county of _____, do swear that I received the assessment book of the taxable property from the clerk of the board of supervisors, with this affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the state board of equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes, and acreage, as required by law." (1915.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 148); took effect immediately. Amended April 1, 1876 (Amendments to Codes 1875-76, p. 14); took effect immediately. Amended April 3, 1880 (Amendments to Codes 1880, p. 28); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 446); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 323); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 430); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

NOTE.—See validating act cited under section 3682, *ante*.

3733. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 323); took effect immediately.

3734. On delivering the assessment book to the tax collector, the auditor must charge the tax collector with the full amount of the taxes levied, and forthwith transmit by mail to the controller of state, in such form as the controller may prescribe, a statement of the amount so charged. Any auditor failing to forward such statement to the controller within ten days after the roll has been delivered to the tax collector, forfeits to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the controller. (1917.)

History: Original section took effect March 16, 1872. Amended March 9, 1883 (Statutes 1883, p. 72); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 323); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 430); took effect immediately. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

3735. The auditor must verify by his affidavit attached thereto, all statements made by him under the provisions of this title. (1872.)

History: Original section; took effect March 16, 1872.

3736. The auditor, if the assessment book or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax list. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 323); took effect immediately.

Auditor must prepare financial statement of the county.

3737. The auditor must, on or before the meeting of the board of supervisors on the first Monday in September, prepare a statement, in duplicate, showing:

First—The indebtedness of the county, funded and floating, the amount of each class, and the rate of interest borne by each class of such indebtedness, or any part thereof.

Second—A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury subject to the payment of such indebtedness.

Third—The rate of taxation for county purposes, as shown by the last tax levy made by the board.

Fourth—The assessed value of all property, in detail, for the year.

Fifth—Such other information as the board of supervisors or the controller of the state may require.

Disposition of such statement.

Duty of controller.

Penalty against auditor.

One of the statements mentioned in this section must be filed with the board on the first Monday in September, and the other forwarded immediately, by mail or express, to the controller of the state. The controller shall include in his biennial report to the governor a digest and synopsis, in tabular form, of all reports received by him under the provisions of this section. Any auditor failing to furnish such statement within the time prescribed by law, or to forward to the controller as herein directed, forfeits to the county one thousand dollars, to be recovered in an action brought by the district attorney in the name of the county. (1915.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 156); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 324); took effect immediately. Added April 1, 1897 (Statutes 1897, p. 431); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

Auditor to furnish assessor with blank personal property tax receipts.

3738. On or before the first Monday in March of each year, the auditor shall furnish the assessor with blank "personal property" receipts in book form, with stubs attached, numbered the same as receipts, each book having fifty receipts, in a form prescribed by the auditor, and charge the assessor with the number of receipts issued. On the first Monday in August, the assessor shall return all unused receipts, and the auditor shall credit him with the numbers returned. (1907.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 156); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 324); took effect immediately. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately.

Auditor to report to tax collector list of property redeemed.

3739. On or before the hour of the day fixed by the tax collector for the sale of the property delinquent for taxes, the auditor must furnish such tax collector a report, in condensed form, of all property redeemed since the date of the tax sale for the preceding year. The tax collector must use such report in the enforcement of sections three thousand seven hundred and seventy-one, three thousand eight hundred and thirteen, and three thousand eight hundred and fourteen. (1897.)

History: Added April 1, 1897 (Statutes 1897, p. 431; took effect immediately.

CHAPTER VII.

COLLECTION OF PROPERTY TAX.

3746. Tax collector to publish notice, specifying what.
 3747. Payment on portion of property without payment on whole.
 3748. County taxes, where paid.
 3749. Manner of giving notice that taxes are due.
 3750. Tax collector to mark on roll date of payment of tax.
 3751. Tax collector must give receipt for taxes paid.
 3752. Superior court to require payment of taxes, when.
 3753. Tax collector to settle with auditor, when; form of.
 3754. Liability of tax collector refusing to settle.
 3755. Action against tax collector on refusal to settle.
 3756. Taxes, when delinquent; penalty to be added.
 3757. When taxes are delinquent. (Special provision on account of financial panic.)
 3758. Tax collector and auditor to compare assessment books, and auditor to add and enter penalties.
 3759. "Delinquent list," must be completed, when.
 3760. Form of, and what delinquent list shall contain.
 3761. Tax collector to be credited on final settlement, etc.
 3762. Tax collector to be charged with delinquent taxes, and penalties added.
 3763. Auditor to notify controller of delinquent taxes charged.
 3764. Publication of delinquent list; when made; what to contain.
 3765. What notice must be appended to delinquent list.
 3766. Manner of publishing delinquent list.
 3767. Publication must designate, what.
 3768. Repealed March 28, 1895.
 3769. Tax collector must file with recorder and clerk copy of delinquent list as published.
 3769a. Tax collector must give notice on mortgage sales.
 3770. Additional cost to defray expenses must be collected by tax collector.
 3771. Manner of conducting sale.
 3772. Report of sales must be sent controller by tax collector.
 3773. Penalty for removing or destroying property after sale.
 3774. Repealed March 28, 1895.
 3775. Repealed March 28, 1895.
 3776. Duty of tax collector and auditor with reference to sales.
 3777. Repealed May 1, 1911.
 3778. Repealed March 28, 1895.
 3779. Repealed March 28, 1895.
 3780. Property may be redeemed within five years from sale.
 3781. Redemption, how made, in what money payable.
 3782. Repealed February 25, 1895.
 3783. Repealed February 25, 1895.
 3784. Repealed February 25, 1895.
 3785. Tax collector to make deeds to state.
 3785a. Tax collector to serve notice before making deeds in certain tax sales.
 3785b. Form of tax deed to individual purchasers.
 3786. Recitals in deed, primary evidence of what.
 3787. Deed conveys absolute title.
 3788. Procedure where state land is sold for delinquent taxes.
 3789. Assessment book, delinquent list, etc., *prima facie* evidence of what.
 3790. Seizure and sale of personal property for taxes by assessor.
 3791. Sale to be at public auction.
 3792. Sale, when and how to be made.
 3793. Fees of assessor for making such sale.
 3794. Assessor to give bill of sale for property sold.
 3795. Excess to be returned to owner.
 3796. Disposition of unsold portion.
 3797. Final settlement of tax collector with auditor.
 3798. Auditor to administer oath to tax collector.
 3799. Auditor to foot up unpaid taxes, etc.
 3800. Tax collector to make certain affidavits as to uncollected taxes.
 3801. Tax collector to furnish auditor list of property sold. Auditor to make entries on assessment book.
 3802. Repealed in 1876.
 3803. Repealed March 28, 1895.
 3804. Taxes, etc., illegally collected to be refunded.
 3804a. Erroneous assessment of property exempt from taxation, cancellation of such assessment.
 3805. Cancellation of double and erroneous assessments.
 3805a. Same.
 3805b. Same.
 3806. Land irregularly assessed not to be sold.
 3807. Misnomer of owner of property does not affect sale.
 3808. Collection of taxes from person assessed, but removed to another county.
 3809. Same.
 3810. Repealed March 28, 1895.

- 3811. Repealed March 28, 1895.
- 3812. Repealed March 28, 1895.
- 3813. Assessment of property after purchase by state.
- 3814. Property not to be sold unless redeemed from previous sale.
- 3815. Redemption of property sold to the state.
- 3816. Distribution of moneys received on redemption.
- 3817. General law of redemption of property sold to the state.
- 3818. Partial redemption of property.
- 3819. Payment of taxes under protest.

Tax collector to publish notice that taxes are due, etc.

3746. On or before the third Monday in October, the tax collector must publish a notice specifying:

1. That the taxes on all personal property secured by real property, and one-half of the taxes on all real property, will be due and payable on the third Monday in October, and will be delinquent on the first Monday in December next thereafter, at six o'clock p.m., and that unless paid prior thereto fifteen per cent will be added to the amount thereof, and that if said one-half be not paid before the last Monday in April next, at six o'clock p.m., an additional five per cent will be added thereto. That the remaining one-half of the taxes on all real property will be payable on and after the first Monday in January next, and will be delinquent on the last Monday in April, next thereafter, at six o'clock p.m., and that unless paid prior thereto, five per cent will be added to the amount thereof.
2. That all taxes may be paid at the time the first installment, as herein provided, is due and payable.
3. The times and places at which payment of taxes may be made. (1915.)

History: Original section took effect March 16, 1872. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 59); took effect immediately. Amended April 16, 1880 (Amendments to Codes 1880, p. 65); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 446); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 324); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 431); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

Partial payment of tax.

3747. The taxes on any particular lot, piece, or parcel of land contained in any assessment may be paid separately from the whole assessment, if such lot, piece, or parcel has a separate valuation on the assessment roll, by paying the amount of state and county taxes due on such lot, piece, or parcel of land, with a proper proportion of the amounts due as tax on personal property, penalties, if any, and a proper proportion of the tax due to any school, road, or other lesser taxation district. The tax collector shall make an entry on the margin of the assessment book, showing what certain property has been released by the payment of the taxes as herein provided, together with the amounts of such taxes separately and specifically set forth. (1901.)

Duty of tax collector.

History: Original section took effect March 16, 1872. Amended March 14, 1878 (Amendments to Codes 1877-78, p. 68); took effect immediately. Amended March 16, 1889 (Statutes 1889, p. 217); took effect sixty days from passage. Amended March 28, 1895 (Statutes 1895, p. 324); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 648); took effect immediately.

Taxes, where to be paid.

3748. All taxes must be paid at the office of the tax collector, unless the board of supervisors by order, made on or before the first Monday in October, direct that the taxes must be collected in the several townships of the county, or in either thereof, or in any municipal corpora-

tion in said county; in which case, the notice by the tax collector must specify a time and place within any township or municipal corporation named in such order, when and where the tax collector will attend to receive the payment of taxes. (1895.)

History: Original section took effect March 16, 1872. Amended March 16, 1889 (Statutes 1889, p. 217); took effect sixty days from passage. Amended March 28, 1895 (Statutes 1895, p. 324); took effect immediately.

3749. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township. (1872.)

History: Original section took effect March 16, 1872.

3750. The tax collector must mark the date of payment of any tax, or of the several partial payments, as the case may be, in the assessment book, opposite the name of the person paying. (1891.)

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 447); took effect July 1, 1891.

3751. He must give a receipt to the person paying any tax, or any part of any tax, specifying the amount of the assessment and the tax, or part of tax, paid, and the amount remaining unpaid, if any, with a description of the property assessed; *provided*, that the receipt for the last installment of taxes may refer, by number or any other intelligent manner, to the receipt given for the first installment of taxes, in lieu of a description of the property assessed. (1891.)

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 447); took effect July 1, 1891.

3752. The superior court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid. In the same manner, the court must require the assignee to pay out of the funds of an insolvent's estate all taxes due from such estate; and no final discharge to such assignee shall be granted until all taxes against the insolvent's estate are paid. (1895.)

History: Original section took effect March 16, 1872. (Section based upon section 16, Statute of 1861, p. 424.) Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 325); took effect immediately.

SEC. 1669, CODE OF CIVIL PROCEDURE (1905). Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county, and municipal taxes, legally levied upon the property of the estate, and any inheritance tax which is due and payable have been paid.

3753. On the first Monday in each month the tax collector must settle with the auditor for all moneys collected for the state or county, and pay the same to the county treasurer, and on the same day must deliver to and file in the office of the auditor a statement under oath, showing:

1. An itemized account of all his transactions and receipts since his last settlement, which account must show the amount collected for each fund or district extended on the assessment book.

2. That all money collected by him as tax collector has been so paid to the county treasurer. (1917.)

History: Original section took effect March 16, 1872. Amended May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

DUPLICATE OR EXCESS PAYMENT LAWS.

CHAPTER 82.

An act to provide for the payment into the county treasury of any moneys now held by county tax collectors which represent duplicate or excess payments of taxes on property in their respective counties, and to provide for the distribution and repayment of such moneys when so paid, and to provide for the payment, repayment and distribution of any duplicate or excess collections which may be made hereafter.

[Approved April 12, 1917.]

The people of the State of California do enact as follows:

SECTION 1. It shall be the duty of every county tax collector, within thirty days after this act takes effect, to pay into the treasury of his county any moneys which said tax collector may have on hand, representing duplicate or excess payments of taxes on property within his county, including such as may have been collected during a previous term or terms, as well as during his present term of office. If the records of the tax collector show the fact, there shall be filed with the county auditor at the time of such payment a description of each piece of property for which such duplicate tax payments were collected and the amount of the tax collected for each such piece of property in excess of the tax regularly levied and collected on such property in any one year.

SEC. 2. Within five years from the time of such payment into the county treasury by the tax collector, any person holding a tax receipt showing the payment to a county tax collector of taxes in any one year on any given property in the county in excess of the taxes which have been regularly levied and collected upon said property for said year, may recover the excess over and above the tax regularly levied and collected on such property for such year, by filing with the board of supervisors a claim therefor, and surrendering with such claim the tax receipt for such excess payment. If the duplicate payment of taxes in excess of the regularly levied taxes shall have been paid by different persons, the party first filing such claim and receipt for the excess payment, shall be entitled to the refund. If, upon examination by the board of supervisors, it is found that such claim has been filed within the five years and represents a payment in excess of the taxes regularly levied and collected for any given piece of property in the county for any given year and the amount thereof has been paid into the county treasury by the tax collector as aforesaid, the board of supervisors shall allow the said claim for the excess payment to the person entitled thereto.

SEC. 3. All moneys paid to the county treasurer by the county tax collector as herein provided, shall be placed to the credit of the general fund of the county.

SEC. 4. Whenever any duplicate or excess payment of taxes is made hereafter, it shall be the duty of the tax collector to retain same for thirty days and if not refunded as hereinafter provided to pay the same into the county treasury on the first Monday of each month thereafter, and at the same time file with the county auditor a description of the property upon which said taxes have been collected, the excess amount collected for each piece so described and the name of the person to whom the property is assessed at the time such excess payment is made. Such duplicate or excess payment of taxes shall be placed to the credit of the general fund of the county and within five years the party making the same, or in the event the payments are made by different parties, the party first filing his claim therefor in the manner and form hereinbefore provided, may secure a refund of such duplicate or excess payment; *provided, however,* that during such thirty day period, the tax collector may adjust any mistakes in the payment of taxes by returning to the party or parties, making such duplicate or excess payments the amount thereof.

SEC. 5. If any tax collector shall refuse to comply with the provisions of this act, the district attorney of the county is hereby authorized to begin suit against the county tax collector to recover any sums in the possession of said county tax collector representing said duplicate or excess payment of taxes, and the statute of limitations shall not be a defense to the maintenance of any such action.

CHAPTER 163.

An act permitting daily payment into the county treasury of duplicate or excess payments of taxes made to the tax collector and providing for the refund of such payments.

[Approved May 5, 1917.]

The people of the State of California do enact as follows:

SECTION 1. The county tax collector, notwithstanding the provisions of any other statute enacted at the forty-second session of the legislature of this state, may pay daily into the county treasury under the provisions of section four thousand one hundred one *a* of the Political Code all duplicate or excess payments of taxes hereafter made to him on property within the county; and all such duplicate and excess payments so paid into the county treasury shall be subject to refund under the provisions of section three thousand eight hundred four of the Political Code.

3754. A tax collector refusing or neglecting for a period of five days to make the payments and settlements required in this title, is liable for the full amount of taxes charged upon the assessment roll. (1872.)

Liability of
collector
for refusing
to settle.

History: Original section; took effect March 16, 1872.

3755. The district attorney must bring suit against the tax collector and his sureties for such amount, and in case of neglect, the controller of state or the board of supervisors may require him to do so; and when the suit is commenced, no credit or allowance must be made to the collector for the taxes outstanding. (1872.)

Action
against
collector
for refusing
or neglecting
to settle.

History: Original section; took effect March 16, 1872.

3756. On the first Monday of December of each year, at six o'clock p. m., all taxes then unpaid, except the last installment of the real property taxes, are delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an additional fifteen per cent thereon; *provided*, that if they be not paid before the last Monday in April next succeeding, at six o'clock p. m., he shall collect an additional five per cent thereon. On the last Monday in April of each year, at six o'clock p. m., all the unpaid portion of the remaining one-half of the taxes on all real property is delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an additional five per cent thereon; *provided*, that the entire tax on any real property may be paid at the time the first installment, as above provided, is due and payable; *and provided, further*, that the taxes on all personal property unsecured by real property shall be due and payable immediately after the assessment of said personal property is made. (1915.)

Taxes de-
linquent.
when.

Penalties
to be added

History: Original section took effect March 16, 1872. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 60); took effect immediately. Amended March 22, 1880 (Amendments to Codes 1880, p. 16); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 447); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 325); took effect immediately. Amended June 4, 1915 (Statutes 1915, p. 1167); in effect August 8, 1915.

3757. Repealed. (1917.)

History: Original section took effect March 16, 1872. Repealed December 23, 1873 (Amendments to Codes 1873-74, p. 160); took effect immediately. Added as a new section November 23, 1909 (Statutes 1909, p. 8); took effect immediately. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Auditor and collector to compare assessment book.

Auditor to compute and enter penalties and deliver assessment book to collector.

Collector to deliver to auditor complete delinquent list.

Delinquent list must contain what.

Auditor to compare delinquent list with assessment book.

Final settlement.

Collector to be charged with taxes and penalties on delinquent list.

Auditor to report to controller delinquent taxes.

Penalty for failure to so report.

3758. On the second Monday in December of each year, in each of the counties, and cities and counties of this state, the tax collector must attend at the office of the auditor with the assessment book, having all items of taxes collected marked "paid." The auditor shall thereupon compute and enter against all the items of taxes due and unpaid the penalty for delinquency, foot up the total amount of penalties then due, and must, within ten days thereafter, deliver to said tax collector the assessment book and charge him with the amount of said penalties. (1897.)

History: Original section took effect March 16, 1872. Amended January 15, 1876 (Amendments to Codes 1875-76, p. 61); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 448); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 325); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 431); took effect immediately.

3759. On the third Monday in May of each year, in each of the counties, and cities and counties of this state, the tax collector must attend at the office of the auditor with the assessment book, having all items of taxes and penalties collected marked "paid," and at the same time he shall deliver to the auditor a complete delinquent list of all persons and property then owing taxes. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately.

3760. In the list so delivered must be set down in numerical or alphabetical order all matters and things contained in the assessment book and relating to delinquent persons or property. (1872.)

History: Original section; took effect March 16, 1872.

3761. The auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the tax collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the treasurer's receipt, or if the treasurer is the collector, require from him an immediate account for any existing deficiency. (1872.)

History: Original section; took effect March 16, 1872.

3762. After settlement with the tax collector, as prescribed in the preceding section, the auditor must charge the tax collector then acting with the amount of taxes due on the delinquent tax list, with the penalty or penalties added thereto, and within three days thereafter deliver the list, duly certified, to such tax collector. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately.

3763. Within ten days after the final settlement, the auditor must transmit, by mail or express, a statement to the controller of state, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes. If the auditor fails to transmit such statement in the time prescribed by law, he shall forfeit

to the state one thousand dollars, to be recovered in an action brought by the attorney general in the name of the controller. (1897.)

History: Original section took effect March 16, 1872. Amended April 1, 1897 (Statutes 1897, p. 432); took effect immediately.

3764. On or before the fifth day in June of each year, the tax collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes, penalties, and costs due, opposite each name and description, with the taxes due on personal property, the delinquent state poll, road, and hospital tax, the taxes due each school, road, or other lesser taxation district, added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person; *provided, however*, that before publication of said list the tax collector and auditor shall jointly arrange said list in such manner that said publication shall designate in some particular manner the property contained in said list which was sold to the state five years previous under the provisions of section three thousand seven hundred and seventy-one of this code, on which the taxes remain unpaid, or which property has not been redeemed or the sale thereof cancelled, and which property the state would otherwise be entitled to a deed thereof after the lapse of five years from said previous sale. (1913.)

History: Original section took effect March 16, 1872. Amended January 15, 1876 (Amendments to Codes 1875-76, p. 61); took effect immediately. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 59); took effect immediately. Amended January 22, 1878 (Amendments to Codes 1877-78, p. 68); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 448); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately. Amended June 3, 1906 (Statutes 1906-07, p. 7); took effect immediately. Amended June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913.

3765. The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and penalties, are paid, the real property upon which such taxes are a lien will be sold. (1895.)

History: Original section took effect March 16, 1872. Amended February 25, 1895 (Statutes 1895, p. 18); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately.

3766. The publication must be made once a week for three successive weeks, in some newspaper, or supplement thereto, published in the county, and the board of supervisors must contract for such publication with the lowest bidder, and after ten days' public notice that such will be let. The bidding must be by sealed proposals. If there is no newspaper published in the county, then by posting a copy of the list in three public places in each township. (1895.)

History: Original section took effect March 16, 1872. Amended April 1, 1878 (Amendments to Codes 1877-78, p. 69); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately.

3767. The publication must designate the day and hour when the property will, by operation of law, be sold to the state, which sale must not be less than twenty-one nor more than twenty-eight days

Publication of delinquent tax list.
Contents of list.

Arrangement of contents.

Manner of making publication.

Time and place of sale to be designated.

from the time of the first publication, and the place shall be in the tax collector's office. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 326); took effect immediately.

3768. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Amended March 16, 1876 (Amendments to Codes 1875-76, p. 62); took effect immediately. Amended March 15, 1887 (Statutes 1886-87, p. 157); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 327); took effect immediately.

Copy of publication to be filed with county clerk and county recorder.

3769. The collector, as soon as he has made the publication required by sections three thousand seven hundred and sixty-four, three thousand seven hundred and sixty-five, three thousand seven hundred and sixty-six, and three thousand seven hundred and sixty-seven, must file with the county recorder and county clerk respectively, a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereto, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in each of the townships, designating the township and places therein, which affidavit is primary evidence of all the facts stated therein. (1872.)

History: Original section; took effect March 16, 1872.

3769a. Repealed. (1917.)

Repealed.

History: Added March 20, 1905 (Statutes 1905, p. 549); took effect sixty days from passage. Repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

Collector must collect "costs."

3770. The tax collector must collect, in addition to the taxes due on the delinquent list, together with the penalties for delinquency, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, which shall be paid to the county and placed to the credit of the salary fund. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 327); took effect immediately.

Property to be sold to the state.

3771. On the day and hour fixed for the sale, all the property delinquent, upon which the taxes of all kinds, penalties, and costs have not been paid, shall, by operation of law and the declaration of the tax collector, be sold to the state, and said tax collector shall make an entry, "Sold to the state," on the delinquent assessment list, opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections three thousand seven hundred and ninety-seven, three thousand seven hundred and ninety-eight and three thousand seven hundred and ninety-nine; *provided*, that on the day of sale the owner or person in possession of any property offered for sale for taxes due thereon, may pay the taxes, penalties, and costs due; and *provided, further*, that when the original tax amounts to the sum of three hundred dollars or more upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said tax or taxes, penalties, and costs, as provided in section three

Proviso as to payment of tax before sale.

When tax amounts to three hundred dollars or over.

thousand eight hundred and ninety-nine; *and provided, further*, that any property contained in the advertised list as provided for in section three thousand seven hundred and sixty-four of this code, which has not been redeemed from the sale made to the state five years previously, shall be sold by the tax collector at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be accepted at such sale for less than the amount of all taxes, penalties and costs due as shown in said advertised list. After such bid has been made and accepted the right or redemption shall cease, except as to the purchaser, who shall have thirty days within which to make redemption as provided in section three thousand seven hundred and eighty-five *b* of this code, and if not so redeemed or if no sale is had under the provisions of this paragraph, then said property shall be deeded to the state as provided in section three thousand seven hundred and eighty-five of this code; *and provided, further*, when any property is to be sold at public auction as provided in this section, within five days after the first publication of said delinquent list the tax collector shall mail a copy of said list or publication, postage thereon prepaid and registered, to the party to whom the land was last assessed next before such sale, at his last known post office address. The money received hereunder shall be distributed as provided in section three thousand eight hundred and ninety-eight of this code. The charge for advertising shall be at the rate fixed by the board of supervisors for other advertising in said county. (1913.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 327); took effect immediately. Amended June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913.

3772. Immediately upon completion of the sale provided for in the preceding section, the tax collector must, by mail or express, transmit to the controller a statement or report, in such form as the controller may desire, showing in detail each sale wherein the state became such purchaser. (1895.)

History: Original section took effect March 16, 1872. (Section based upon section 16, Statutes of 1861, p. 332.) Amended March 26, 1895 (Statutes 1895, p. 327); took effect immediately.

3773. When lands have been sold, or shall hereafter be sold, to the State of California by reason of nonpayment of taxes, no owner or claimant of such lands, nor any other person, shall remove or destroy any building, fixture or other improvement on such lands, or cut or remove any timber, or do or cause to be done any other act which shall tend permanently to impair the value of the lands or the value of the improvements thereon; *provided*, the provisions of this section shall not apply when such lands have been redeemed from sale or such lands have been sold and disposed of by the state. Violation of any of the provisions of this paragraph of this section shall constitute a misdemeanor.

From and after the date of recording of the deed to the state as provided in section three thousand seven hundred eighty-five of this code, the state shall be entitled to receive and collect all rents, issues and profits arising in any manner from the property so conveyed. The controller of state may demand from the former owner of said property, or any person having any interest therein, or any person in the possession, actual or constructive, of said property, or of any part thereof, an accounting for said rents, issues and profits, and may at any time after recording of the deed to the state as aforesaid demand and receive possession of the property so conveyed, and such possession shall be surrendered to any person

Property sold to state five years previously, sold to highest bidder.

Redemption ceases after sale.

Copy of publication to be mailed former owner.

Cost of publication.

After lands sold to state for taxes, to remove improvements, destroy timber, etc.

State entitled to rents, etc.

Duty of controller.

Disposition of moneys.

designated by the controller, authority for such designation being hereby granted. For the enforcement of the provisions of this paragraph of this section the controller is authorized to commence and maintain an action or actions in behalf of the state. The superior court of the county of Sacramento shall have jurisdiction in the matter of such actions. All moneys recovered under the provisions of this section shall be paid into the state treasury to the credit of the general fund and shall not be considered as a credit on the amount necessary to be paid in redemption of the property from the sale to the state. (1915.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 148); took effect immediately. Amended March 9, 1893 (Statutes 1893, p. 99); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 18); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 327); took effect immediately. Added June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913. Amended May 20, 1915 (Statutes 1915, p. 658); in effect August 8, 1915.

Repealed.

3774. Repealed. (1895.)

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 327); took effect immediately.

Repealed.

3775. Repealed. (1895.)

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 327); took effect immediately.

Record of sale kept by tax collector, etc.

3776. The tax collector must enter in appropriate columns in the delinquent list opposite the description of each parcel of land sold the date of sale and the total amount for which such parcel of land was sold. In case of a subsequent redemption the auditor must make a note of such redemption and the date thereof on the margin of the delinquent list opposite the description of the land sold. Wherever by any other section of this code, provision is made for the cancellation of a certificate of tax sale, the tax sale itself may be cancelled for like reasons by the same board or officer mentioned in said sections; and whenever any sale is so canceled, the auditor shall be notified thereof and shall enter the fact and date of such cancellation upon the margin of the delinquent list opposite the description of the property involved. (1911.)

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 327); took effect immediately. Added April 1, 1897 (Statutes 1897, p. 432); took effect immediately. Amended May 1, 1911 (Statutes 1911, p. 1436); took effect sixty days from passage.

NOTE.—See "validating acts" cited under section 3785, *post*.

Repealed.

3777. Repealed. (1911.)

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 328); took effect immediately. Added April 1, 1897 (Statutes 1897, p. 432); took effect immediately. Repealed May 1, 1911 (Statutes 1911, p. 1436); took effect sixty days from passage.

3778. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Amended February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 328); took effect immediately.

3779. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 328); took effect immediately.

3780. A redemption of the property sold may be made by the owner, ^{Redemption,} or any party in interest, within five years from the date of the ^{how and} when to be sale to the state, or at any time prior to the entry or sale of said land ^{made.} by the state, in the manner provided by section three thousand eight hundred and seventeen. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 157); took effect immediately. Amended January 13, 1876 (Amendments to Codes 1875-76, p. 62); took effect immediately. Amended March 12, 1885 (Statutes 1884-85, p. 91); took effect sixty days from passage. Amended March 19, 1891 (Statutes 1891, p. 133); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 328); took effect immediately.

3781. Redemption must be made to the county treasurer on an estimate furnished by the auditor, in lawful money of the United States, and the treasurer must account to the state for all moneys received under such redemption, which said moneys shall be distributed in the manner provided by section three thousand eight hundred and sixteen. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 157); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Amended March 20, 1895 (Statutes 1895, p. 328); took effect immediately.

3782. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately.

3783. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately.

3784. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed February 25, 1895 (Statutes 1895, p. 19); took effect immediately.

3785. If the property is not redeemed within five years from the date of the sale to the state, the tax collector, or his successor in office, must make the state a deed of the property. Said deed shall be to state in substance and may be in form, as follows:

Form of
deed.

"This indenture, made the _____ day of _____ 19____, between _____, tax collector of the county of _____, State of California, first party, and the State of California, second party, witnesseth:

That whereas the real property hereinafter described was duly assessed for taxation in the year 19____, to _____ (stating name as on assessment roll) and was thereafter on the _____ day of _____, 19____, duly sold to the State of California by _____, tax collector of said county of _____, for non-payment of delinquent taxes which had been legally levied in said year 19____, and were a lien on said real property, the total amount for which the same was sold being _____.

And whereas the period of five years has elapsed since said sale and no person has redeemed the said property.

Now, therefore, the said first party in consideration of the premises, and in pursuance of the statute in such case made and provided, does hereby grant to the said second party that certain real property in the county of _____, State of California, more particularly described as follows, to wit: * *

In witness whereof, said first party has hereunto set his hand the day and year first above written.

----- Tax collector of the county of _____."

No other matters need be recited in the said deed than those provided for in the above form, whether the sale is made before or after this act takes effect.

No charge shall be made by the tax collector for the making of any such deed, and the acknowledgment of all such deeds shall be taken by the county clerk free of charge.

All such deeds shall be recorded in the office of the county recorder of the county wherein the property sold is situated, and said recorder shall make no charge therefor; *provided*, that in counties where the county recorders are paid no salaries, but fees only, such recorders shall receive for filing, recording and indexing each deed, the sum of seventy-five cents, payable out of the county treasury in the same manner that other claims are paid. The state controller shall provide uniform blank deeds, upon which all conveyances to the state under the provisions of this section shall be made. All such deeds, after being duly recorded, as herein provided, shall be forwarded by the county recorder to the controller. The controller shall record such deeds at length in a book to be provided for that purpose, in which book a marginal space shall be left to show the subsequent disposition of the property by the state; *provided, however*, that when state lands have been sold to the state upon which the full purchase price has not been paid, the deeds to the state, after being duly recorded, as herein provided, shall be forwarded by the county recorder to the surveyor general and remain on file in his office, and the state shall dispose of such lands in the manner provided in section three thousand seven hundred and eighty-eight; *provided, however*, that in all cases where land has been heretofore sold for delinquent taxes to purchasers other than the State of California, the deed therefor must have been made within the time allowed under the provisions of that certain act entitled "An act to amend section thirty-seven hundred and eighty-five of the Political Code of the State of California, relating to the issuance of tax deeds," approved March 23, 1907, and unless the deed has been so made, the purchaser shall be deemed to have relinquished all his rights under such sale. (1911.)

No charge
for making
or recording
deeds.

Exception.

Controller
to furnish
blank deeds.
Deeds to be
filed with
controller.

Record.

Deeds for
"state
lands."Deeds,
when to
be made.Rights of
"individual
purchasers."

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 157); took effect immediately. Amended February 25, 1876 (Amendments to Codes 1875-76, p. 62); took effect immediately. Amended March 12, 1885 (Statutes 1884-85, p.

90); took effect sixty days from passage. Amended March 19, 1891 (Statutes 1891, p. 134); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 19); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 328); took effect immediately. Amended February 27, 1901 (Statutes 1901, p. 52); became a law without governor's approval; took effect immediately. Amended March 23, 1907 (Statutes 1907, p. 512); took effect sixty days from passage. Amended April 15, 1909 (Statutes 1909, p. 921); took effect sixty days from passage. Amended April 25, 1911 (Statutes 1911, p. 1102); took effect sixty days from passage.

NOTE.—With reference to the provisions as to state school lands in the foregoing section, see *Curtin vs. Kingsbury*, 31 Cal. App. 57, 61.

"VALIDATING ACTS."

(Chapter 59, Laws of 1903. Statutes 1903, p. 63.)

An act to confirm, validate and legalize certificates of tax sales and tax deeds executed to the State of California for property sold and deeded thereto for nonpayment of taxes.

[Approved February 28, 1903.]

SECTION 1. That all certificates of tax sales and tax deeds made to this state by the county tax collector, which certificates and deeds are based upon the sale of property for nonpayment of taxes, and which certificates and deeds fail to recite the correct date, or any date, when the right of redemption will expire, or had expired, or which certificates recite an incorrect date when the state would be entitled to a deed, be and they are hereby confirmed, validated, and legalized, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things required by law had been recited therein and performed in the first instance; *provided*, that in all cases five years shall have elapsed between the date of the sale of the property to the state for nonpayment of taxes and the date of the execution of such deed.

SEC. 2. This act shall take effect immediately.

(Chapter 610, Laws of 1909. Statutes 1909, p. 920.)

An act to legalize, confirm, and validate tax deeds made to the State of California for delinquent taxes, and deeds made to purchasers of property sold under and in pursuance of the provisions of sections three thousand eight hundred and ninety-seven and three thousand eight hundred and ninety-eight of the Political Code.

[Approved April 15, 1909.]

SECTION 1. That all deeds to the State of California based upon delinquent tax sales since the year 1894, and where the five years allowed by law for redemption of the property had expired, and which said deeds were not executed within the time prescribed by any law of this state, and all deeds to purchasers of property made by tax collectors under and in pursuance of the provisions of sections three thousand eight hundred and ninety-seven and three thousand eight hundred and ninety-eight of the Political Code, wherein the notice of sale was mailed but not registered as required by law, be, and such deeds hereby are, legalized, confirmed, and validated, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things had been properly performed in the first instance.

SEC. 2. This act shall not apply to any tax deed which was or is in litigation at the time this act takes effect.

Tax collector to represent the state.

3785a. For the purpose of enabling the State of California to secure proper and valid deeds to any and all real property which was assessed and sold to the state prior to March 28, 1895, for delinquent state and county taxes, and where no redemption of said real property has since been made, the tax collector of a county or city and county in which any such real property is situated is hereby designated, appointed and selected to represent the State of California for the purposes herein mentioned, and the said tax collector is also authorized and empowered to appoint some competent person who is a citizen of the United States and over the age of eighteen years to act in his place and stead, who shall when appointed have full power to represent the State of California for the purposes herein mentioned. The said tax collector, or the person appointed by him, is authorized and empowered on behalf of the state, and as its agent, upon the written authorization of the state controller to any tax

Authority to serve notices.

collector, to serve any and all notices upon the owner and owners of any and all property purchased and which was sold to the state prior to March 28, 1895, for delinquent state and county taxes, and upon any and all other persons as may be necessary, and to post and publish any and all notices, and make any and all affidavits, and do any and all acts and things of whatsoever kind and nature, which may be necessary, or which were required or necessary to be done under the laws in force at the time of the sale of said real property for delinquent taxes, so that the state may receive a proper and valid deed to such real property. All such notices shall be given in the name of the State of California (the purchaser) and the name of the State of California, by such agent, shall be signed thereto; and the said tax collector, or the person selected and appointed by him, is empowered and authorized to do any and all acts and things as fully to all intents and purposes as any purchaser at any such sale might or could do. The owner of any such property shall have the same rights to redeem, and all other rights, as he had at the time said sale was made, and shall also have the right to redeem at any time until the state shall have disposed of said property, in the manner now provided by law.

The said person so serving any notice as above referred to, shall be entitled to receive the sum of three dollars for the service of said notice and the making of said affidavit, which is hereby made a charge against the county wherein the said real property is situated, and also a reasonable amount for costs of publication, when necessary, which shall be a county charge and shall be paid by the said county to such person, and which said sums shall be paid by the redemptioner, if redemption be made, as provided by the law in force at the time said sale was made. If redemption be made by the owner of said land the amount of such costs of service of said notice, and of publication when necessary, shall belong to such county and be retained by it; and, likewise, if said property be sold by the state as now provided by law the said county shall retain the said sums so advanced and paid by it.

When an application shall be made to the tax collector for the purchase of property under the provisions of section three thousand eight hundred and ninety-seven of the Political Code, the said sum of three dollars, and when notice is given by publication as required by the law in force at the time the property was sold for delinquent taxes, the cost of such publication, shall be added to the amount of deposit under said section which the applicant is required to make in order to secure advertising costs, and shall be a charge against the property, and no redemption of such property, after the deed to the state has been filed with the controller as provided in section three thousand seven hundred and eighty-five of this code and before said sale may be had without payment of such costs of service and of publication and also of advertising as provided by said section three thousand eight hundred and ninety-seven of this code. (1909.)

History: Added March 19, 1909 (Statutes 1909, p. 456); took effect immediately.

3785b. When property has been sold to a purchaser at delinquent tax sale, other than the State of California, in pursuance of section three thousand seven hundred seventy-one of this code, the tax collector must forthwith execute a deed to such purchaser, or his assigns, conveying

Owner's
right of
redemption.

Compensa-
tion for
serving
notices.

Application
to purchase,
costs ac-
cruing to.

Tax col-
lector to
make deed
to pur-
chaser.

said property: *provided*, no deed shall be delivered in any event until redemption has been made of such property and all taxes, penalties, interest and charges have been paid which may have accrued by reason of any previous tax sale or delinquency. Said deed shall be in substance and may be in form as follows:

Form of
deed.

"This indenture, made the _____ day of _____, 19____, between _____, tax collector of the county of _____, State of California, first part, and _____, second party, witnesseth:

That whereas the real property hereinafter described was duly assessed for taxation in the year 19____ to _____ (stating name as on assessment roll) and was thereafter on the _____ day of _____, 19____, duly sold to _____ by _____, tax collector of said county of _____ for non-payment of delinquent taxes which had been legally levied in said year 19____, and were a lien on said real property, the total amount for which the same was sold being _____. And

Whereas, all taxes levied and assessed against said property prior to the year 19____ have been paid and discharged:

Now, therefore, the said first party in consideration of the premises, and in pursuance of the statute in such case made and provided does hereby grant to the said second party that certain real property in the county of _____, State of California, more particularly described as follows, to wit: * *

In witness whereof said first party has hereunto set his hand the day and year first above written.

No charge
for deed.

----- Tax collector of the county of _____."

No other matters need be recited in the said deed than those provided for in the above form, whether the sale is made before or after this act takes effect. No charge shall be made by the tax collector for the making of any such deed, and the acknowledgment of all such deeds shall be taken by the county clerk free of charge. The provisions of sections three thousand seven hundred eighty-six and three thousand seven hundred eighty-seven of this code are hereby made applicable to the deed herein provided for. (1913.)

History: Added June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913.

Deed
primary
evidence
of what.

3786. Such deed, duly acknowledged or proved, is primary evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the the real estate was sold to pay a poll tax or taxes on personal property, that the real estate belonged to the person liable to pay the tax. (1911.)

History: Original section took effect March 16, 1872. Amended April 25, 1911 (Statutes 1911, p. 1102); took effect sixty days from passage.

Recitals in
deed are
conclusive
evidence
of what.

3787. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed.

Such deed conveys to the state the absolute title to the property described therein, free of all encumbrances, except any lien of taxes levied for municipal or irrigation district purposes and except when the land is owned by the United States or this state; in which case it is the *prima facie* evidence of the right of possession, accrued as that of the date of the deed to the state. (1917.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 329); took effect immediately. Amended June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913. Amended May 5, 1917 (Statutes 1917, p. 241); in effect July 27, 1917.

3788. When state lands, upon which the full purchase price has not been paid, have been sold to the state for delinquent taxes, and the deed therefor to the state provided for in section thirty-seven hundred and eighty-five of this code, has been forwarded to and filed with the surveyor general, the said lands shall again become subject to entry and sale, in the same manner, and subject to the same conditions, as apply to other state lands of like character, except that the former possessors or owners of the land thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for the period of six months after the deeds are filed with the surveyor general, as prescribed in this section; during which said period of six months no application by any person other than said former possessors, or owners, their heirs or assigns, shall be filed; *and provided, further*, that the former possessors or owners of said land thus deeded to the state, their heirs or assigns, shall have the right to be restored to their former estate and title (at any time either during the said period of six months above referred to, or afterwards, and before application for said land is made and filed with the surveyor general by any other person) upon paying to the county treasurer of the county wherein the said land is situated a sum equivalent to the taxes, penalties, costs and accruing costs by virtue whereof the state became a purchaser of the said lands, and also, all delinquent taxes, penalties, and costs which may have accrued upon such lands subsequent to the date of the certificate of purchase under which the former possessors or owners, or their heirs and assigns, claim title to said lands and also all unpaid interest up to the first day of January, as hereinafter provided, which said money so paid into the treasury shall be distributed in the manner prescribed in section thirty-eight hundred and sixteen; *provided*, that the money received for twenty per cent of the purchase money and accruing interest, together with the principal, in case of full payment on the lands, shall be distributed by the surveyor general, in the manner now provided by law for such distribution. If such former owner or possessor, his heirs or assigns desires to avail himself of the privileges hereof, he shall file with the surveyor general the receipt of the county treasurer, showing the payment of all such taxes, together with all unpaid interest up to the first day of January following the date when he shall make the said payment to the said county treasurer, and thereupon the surveyor general shall give to such person a certificate signed and sealed by him, but which need not be acknowledged, showing full payment of all such sums, which said receipt of the surveyor general shall be recorded by said persons in the county recorder's office of the county wherein the said lands are situated, and the said receipt, when so recorded, shall have the same effect as a deed of reconveyance of the interest conveyed by such deed, and the said former owner or possessor, his heirs or assigns, shall thereby be restored to all his rights in the said lands, and his certificate of purchase shall be in full force and effect as effectually as though no sale had been

State lands sold to state for taxes subject to entry.

Proviso as to former owners.

Distribution of moneys received.

Procedure for former owner to regain lands.

Recording of receipt.

Effect of recording.

Duty of
surveyor
general on
application
to purchase.

made; but the surveyor general shall not receive or file any application or make a sale of any lands thus deeded to the state, except upon the previous payment into the state treasury, as other moneys are required to be paid therein, in addition to the price of said lands as compared with the price fixed for other state lands of like character, by the person or persons proposing to file the application and make the purchase, of a sum equal to the delinquent taxes, penalties, costs and accruing costs, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon such lands prior to and subsequent to the date of the sale to the state in pursuance of which the state received a deed therefor, and the surveyor general's authority for filing said application, if said lands are otherwise subject to sale, shall be the production by said applicant of the county treasurer's receipts showing full payment of the delinquent taxes, penalties and costs as herein specified. If an application for the land is not presented to the surveyor general's office by the party, or his agent, who paid the delinquent taxes, penalties and costs, by virtue whereof the state became a purchaser of said land, within a period of fifteen days after the payment thereof, the land shall be subject to sale to the first person presenting his application for said land to the surveyor general's office, accompanied by a certified copy of the auditor's estimate and treasurer's receipt, showing full payment of all delinquent taxes, penalties and costs, as herein specified.

If former
owner fails
to apply to
purchase
land subject
to sale to
others.

An estimate of the amount of delinquent taxes, penalties and costs, as herein specified, must be made by the county auditor of the county wherein the land is situated, upon the written request for same by the surveyor general, and without cost to the state. Said county auditor's estimate shall include all delinquent taxes, penalties and costs, as shown by the records in the state land office, by virtue whereof the state became a purchaser of the land thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon such lands prior to and subsequent to the date of the sale to the state, in pursuance of which the state received a deed therefor. The money thus paid into the treasury shall be distributed in the manner prescribed in section thirty-eight hundred and sixteen; *provided*, that the moneys received for twenty per cent of the purchase money and accruing interest, together with the principal, in case of full payment on the lands, shall be distributed by the surveyor general, in the manner now provided by law for such distribution.

Distribution
of moneys
received.

Proviso as
to United
States reser-
vations.

Nothing in this section contained shall apply to land situated within the exterior boundaries of a military, Indian or forest reservation created by authority of the United States, or of a national forest, national park or national monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes. (1911.)

History: Original section took effect March 16, 1872. Amended March 30, 1874 (Amendments to Codes 1873-74, p. 54); took effect July 1, 1874. Amended March 9, 1876 (Amendments to Codes 1875-76, p. 63); took effect immediately. Amended February 13, 1885 (Statutes 1884-85, p. 3); took effect sixty days from passage. Amended February 25, 1895 (Statutes 1895, p. 20); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 329); took effect immediately. Amended March 2, 1909 (Statutes 1909, p. 122); took effect sixty days from passage. Amended May 1, 1911 (Statutes 1911, p. 1417); took effect immediately.

NOTE.—Section 2 of the 1909 act to amend section 3788 is as follows:

SEC. 2. Section fifteen of an act entitled "An act to amend section thirty-seven hundred and sixty-five, section thirty-seven hundred and seventy-three, section thirty-seven hundred and seventy-eight, section thirty-seven hundred and eighty, section thirty-seven hundred and eighty-one, section thirty-seven hundred and eighty-five, section thirty-seven hundred and eighty-eight,

section thirty-eight hundred and thirteen, section thirty-eight hundred and sixteen and section thirty-eight hundred and seventeen; and to repeal section thirty-seven hundred and seventy-four, section thirty-seven hundred and seventy-five, section thirty-seven hundred and seventy-six, section thirty-seven hundred and seventy-seven, section thirty-seven hundred and seventy-eight, section thirty-seven hundred and eighty-two, section thirty-seven hundred and eighty-three, section thirty-seven hundred and eighty-four and section thirty-eight hundred and eighteen of an act of the legislature of the State of California entitled 'An act to establish a Political Code, approved March 12, 1872, relating to the sale of real property for delinquent taxes, and the redemption and re-sale of such property; and to add a new section thereto, to be known and designated as section thirty-eight hundred and one, also relating to the sale of real property for delinquent taxes,' approved February 25, 1895, is hereby repealed.

NOTE.—In the case of *Curtin vs. Kingsbury*, 31 Cal. App. p. 57, the Appellate Court declared: "Without question, section 3788 of the Political Code is in conflict with this act (Chap. 389, Stats. 1915, p. 605), and is thereby repealed so far as it provided a different method for the disposition of school land."

Cancellation Provisions, Taxes on State Lands.

(Statutes 1911, p. 1416; Statutes 1913, p. 43.)

SECTION 1. It shall be the duty of the board of supervisors of each county in the state, upon petition of the surveyor general of the State of California, at the first meeting of the board following the receipt of said petition, to order the cancellation of all liens for taxes on any sixteenth or thirty-sixth section, or legal subdivision thereof, which sixteenth or thirty-sixth section, or legal subdivision thereof, has been, subsequent to March 24, 1909, or may hereafter be, used as bases for selections or conveyed to the federal government in accordance with, or pursuant to, the provisions of an act entitled "An act to authorize the adjustment and settlement of a controversy existing between the United States and the State of California, in relation to the grants made by congress to the State of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the state for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof," approved December 24, 1911. A certificate from the surveyor general setting forth the fact that any sixteenth or thirty-sixth section is necessary to be used as bases for lieu selections, or is intended to be conveyed to the federal government in pursuance of the provisions of the act last hereinbefore referred to, shall be authority for the action of the board of supervisors in ordering the cancellation of liens for taxes on such lands.

SEC. 2. The cancellation of the liens shall be reported by the board of supervisors to the surveyor general of the State of California and to the county recorder to be noted by him upon his records.

SEC. 3. This act shall take effect immediately from and after its passage.

3789. The assessment book or delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 149); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately.

3790. The tax collector of each county, and city and county, shall have power, and it is hereby made his duty at any time after receiving from the county auditor the assessment books in pursuance of the provisions of section thirty-seven hundred and thirty-two of the Political Code, to collect the taxes due on personal property, except when real

Assessment book, delinquent list, certified, evidence of what.

estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. (1901.)

History: Original section took effect March 16, 1872. Amended January 15, 1876 (Amendments to Codes 1875-76, p. 61); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 649); took effect immediately.

Time and manner of sale.

3791. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentages, and costs. (1872.)

History: Original section; took effect March 16, 1872.

Notice of sale, how given.

3792. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places. (1872.)

History: Original section; took effect March 16, 1872.

Fee for sale.

3793. For seizing or selling personal property for taxes, the assessor may charge in each case the sum of three dollars and the costs if said personal property is advertised, of advertising the same, and in addition thereto the same mileage and keeper's fees, as is allowed by law to the sheriff of the county when seizing and keeping property, subject to execution, under attachment. (1911.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately. Amended March 7, 1911 (Statutes 1911, p. 286); took effect sixty days from passage.

Title vests in purchaser on payment, etc.

3794. On payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser. (1872.)

History: Original section; took effect March 16, 1872.

Excess on sale to be returned to owner.

3795. All excess over the taxes, per cent, and costs of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns. (1872.)

History: Original section; took effect March 16, 1872.

Unsold portion.

3796. The unsold portion of any property may be left at the place of sale at the risk of the owner. (1872.)

History: Original section; took effect March 16, 1872.

Final settlement of collector with auditor.

3797. The tax collector must, on or before the last day in June of each year, attend at the office of the auditor with the delinquent list, with all items collected marked "paid" thereon, and the auditor must then carefully compare the list with the assessment of persons and property not marked "paid" on the assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book. (1895.)

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 449); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately.

3798. The auditor must then administer to the tax collector an oath of tax to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment. (1872.)

oath of tax
collector to
be sub-
scribed in
delinquent
list.

History: Original section; took effect March 16, 1872.

3799. The auditor must then foot up the amount of taxes unpaid, and credit the tax collector with the amount, and have a final settlement with him; and the delinquent list must remain on file in the auditor's office. (1895.)

Tax col-
lector to
be credited
with un-
paid taxes.

History: Original section took effect March 16, 1872. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 59); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately.

3800. At the time mentioned in section three thousand seven hundred and sixty-four, the tax collector must make an affidavit, indorsed on the list, that the taxes not marked "paid" have not been paid. (1895.)

Tax col-
lector to
make cer-
tain affidavit.

History: Original section took effect March 16, 1872. Amended March 31, 1891 (Statutes 1891, p. 449); took effect July 1, 1891. Amended March 28, 1895 (Statutes 1895, p. 330); took effect immediately.

3801. It shall be the duty of the tax collector, within thirty days after the sale of any land for delinquent taxes, to furnish to the auditor the complete printed list of all such lands so sold, and thereupon the auditor shall enter upon the assessment book of the current year, immediately after the description of the property, the fact that said property has been sold for taxes, and the date of such sale. (1897.)

Tax collector
to furnish
auditor list
of land
sold.

Duty of
auditor.

History: Original section took effect March 16, 1872. Repealed March 24, 1874 (Amendments to Codes 1873-74, p. 150); took effect immediately. Re-enacted February 25, 1895 (Statutes 1895, p. 21); took effect immediately. Added March 28, 1895 (Statutes 1895, p. 331); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 432); took effect immediately.

3802. Repealed. (1872.)

Repealed.

History: Original section took effect March 16, 1872. Repealed April 3, 1876 (Amendments to Codes 1875-76, p. 59); took effect immediately.

3803. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 331); took effect immediately.

3804. Any taxes, penalties or costs thereon heretofore or hereafter paid more than once, or heretofore or hereafter erroneously or illegally collected, or any taxes heretofore or hereafter paid upon an assessment in excess of the actual cash value of the property so assessed by reason of a clerical error of the assessor as to the excess in such cases, or any taxes heretofore or hereafter paid upon an erroneous assessment of improvements on real estate not in fact in existence when said taxes become a lien, may, by order of the board of supervisors, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer by the county treasurer as provided by section thirty-eight hundred and sixty-five and section thirty-eight hundred and sixty-six of this code, and it shall afterwards appear to the satisfaction of the board of supervisors that a portion of the money so paid should

Taxes, etc.,
illegally
collected to
be refunded.

be refunded as herein provided, said board of supervisors may refund such portion of the said taxes, penalties and costs so paid to the state treasurer, to the person paying the same or to his guardian, or in case of his death, to his executor or administrator, out of the general fund, and upon the rendering of the report required by section thirty-eight hundred and sixty-eight of this code the auditor shall certify to the controller, in such form as the controller may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the controller, if satisfied of the legality of such refunding by the said board, shall give such treasurer credit for the state's portion of the amounts so refunded, as prescribed in section thirty-eight hundred and seventy-one of this code.

Proviso as
to special
taxes.

When the taxes, penalties and costs hereinbefore referred to are levied in behalf of any school district or any municipal or other public corporation, and collected by the officers of the county, the same may be refunded upon order of the board of supervisors, and the county treasurer shall pay the amount to be refunded out of any money in his possession belonging to the appropriate fund of such school district or municipal or other public corporation. No order for the refund of taxes, penalties or costs under this section shall be made except upon a verified claim therefor verified by the person who has paid said tax, or by his guardian, or in case of his death, by his executor or administrator, which said claim must be filed within three years after the making of the payment sought to be refunded.

Limitation
of time for
presentation
of claims for
refunds.

In no case shall any judgement be rendered in favor of plaintiff in any action brought for the enforcement or allowance of any rights or claims under this section (except in actions brought by the county treasurer to enforce any credits hereinabove provided for) if the said action be brought by an assignee of the person paying said tax, or by any person other than the person who has paid said tax, or by his guardian, or in case of his death, by his executor or administrator. (1913.)

Who entitled
to claim
refund.

History: Original section took effect March 16, 1872. Amended March 19, 1889 (Statutes 1889, p. 347); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 331); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 648); took effect immediately. Amended March 3, 1905 (Statutes 1905, p. 38); took effect immediately. Amended March 21, 1907 (Statutes 1907, p. 755); took effect sixty days after passage. Amended May 19, 1913 (Statutes 1913, p. 228); in effect August 10, 1913.

NOTE.—See chapters 82 and 163 of the laws of 1917, cited under section 5753, *ante*.

Erroneous
assessment
of property
exempt from
taxation;
cancellation
of assessment,
etc.

3804a. When property that is exempt from taxation has been erroneously assessed, or when improvements which did not in fact exist when the tax became a lien, have been erroneously assessed on real estate, the board of supervisors may, upon satisfactory proof thereof, with the written consent of the district attorney, and by an order entered upon its minutes, direct the auditor to cancel such assessment; and if real property has been sold to the state for nonpayment of the tax levied on such property or improvements so erroneously assessed, and a certificate of sale or deed therefor has been issued to the state, and the state has not disposed of the property so sold, the order of the board shall also direct the recorder to cancel the certificate of sale or deed so issued, so far as the same relates to such exempt property or nonexistent improvements. In the city and county of San Francisco the written consent of the city attorney shall have the same effect as the written consent of the district attorney. (1911.)

History: New section; added March 8, 1911 (Statutes 1911, p. 312); took effect sixty days from passage.

3804b. Where real property shall hereafter be assessed by the assessors of two or more counties for the same year the owner thereof may file an action in the superior court of one of said counties against the conflicting claimants and discharge the obligation by paying the largest amount of taxes assessed and levied on said land by any of said counties into court and compel said counties to interplead and litigate their several claims among themselves in accordance with section three hundred eighty-six of the Code of Civil Procedure. Where real property has heretofore been assessed by the assessors of two or more counties for the same year and the owner thereof has paid all of the taxes on one of such assessments, upon proof of the payment of such taxes on one of such assessments for any year, by the production of a tax receipt or certificate of the auditor of the county in which such payment has been made, the board of supervisors of any other county claiming the right to assess and tax such real property, shall thereupon enter an order upon its minutes directing the auditor to cancel such double assessment of such property by an entry on the margin of the assessment book, as also upon the delinquent list, should such double assessment be carried therein. If the property assessed under such double assessment has been sold to the state and a certificate of sale or deed therefor has been issued to the state, the order of the board shall further direct the recorder to cancel such erroneous certificate and deed so issued except where the state has disposed of the property thereby conveyed. (1917.)

History. Added April 13, 1917 (Statutes 1917, p. 118); in effect July 27, 1917.

3805. When the tax collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts, by his certificate, to the auditor and board of supervisors; the board shall thereupon enter an order upon its minutes directing the auditor to cancel such double assessment by an entry on the margin of the assessment book, as also upon the delinquent list, should such double assessment be carried therein. If the property assessed under such double assessment has been sold to the state, and a certificate of sale or deed therefor has been issued to the state, the order of the board shall further direct the county recorder to cancel such erroneous certificate of sale and deed so issued, before the state has disposed of the property thereby conveyed; *provided*, no cancellation of a double assessment, certificate of sale or deed shall be made in any case until the taxes, penalties, costs and other charges by law against the property on one of such assessments shall have been paid. In case the tax collector issues an erroneous certificate of sale, or deed, to any property upon which the taxes have been fully paid for the year therein mentioned, such fact shall be certified to the board of supervisors by the auditor and tax collector, and thereupon said board shall make and enter in its minutes an order authorizing the county recorder to cancel such erroneous certificate or deed. Whenever a sale of property has been made for the nonpayment of a poll tax unlawfully assessed, or which, if lawfully assessed, has been paid and payment has not been properly noted, the board of supervisors may, upon proof thereof, by an order entered upon its minutes, direct the county recorder to cancel the certificate of sale or deed issued to the state under such sale, so far as the same relates to said poll tax, at any time before the state has disposed of such property; *provided*, that where real property other than that belonging to a person liable for poll tax on the first Monday of March of the year in which such poll tax became due, has been erroneously sold for the poll tax of such person, the board of supervisors, upon satisfactory proof of ownership of the said property, may order the certificate of sale or deed

Erroneous assessment in more than one county same year, future disposition.

Assessment for previous year under same condition to be canceled.

Erroneous tax deed to be canceled.

Double assessments may be cancelled.

Certificates of sale and deeds.

Tax on one assessment must be first paid. Erroneous certificate of sale or deed.

Illegal sale for poll tax.

Proviso.

Proviso.

canceled; *provided further, however*, that no such order shall be made if the person liable for said poll tax owned any interest whatever in said property on said first Monday in March, when said tax became due, or owned any interest therein at the time of the application for such cancellation. (1901.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 331); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 432); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 649); took effect immediately.

Cancellation of assessments, certificates of sale and deeds, where government and state lands are involved.

3805a. Whenever the possessory interest in land belonging to the United States, or land upon which final payment had not, at the time of assessment, been made to the United States, or land of this state upon which the full purchase price has not or had not been made to the state, has been, or may hereafter be, assessed and sold to the state for delinquent state, county or local district taxes, or whenever the taxes levied against any such possessory interests in lands, or against any such state lands, have not been paid, the board of supervisors shall, upon verified application of the owner of the land, by an order entered upon its minutes, direct the auditor to cancel such assessment; and if the property under such assessment has been sold to the state, and a certificate of sale or deed thereon issued to the state, such order of the board shall further direct the recorder to cancel such certificate of sale and deed; *provided*, that no order to cancel any such assessments, certificates of sale or deeds shall be made where the person or persons to whom such land or possessory interests, or state lands, his or their successors or assigns, have, after such assessment, obtained from the United States or this state a patent or the absolute title to said lands or retain any interest therein, or been in possession of the premises; *and provided*, that no order to cancel any assessment shall be made whereby the person or persons, his or their successors or assigns shall be relieved from paying the taxes upon said property for the full time he or they have had the possession of said property, no matter in whose name said property was or had been assessed. Before an order to cancel such assessment, certificate of sale or deed shall be granted, the applicant shall file with the board a certificate of the register of the United States land office, or of the state land office, showing that the person or persons to whom such assessment was made, his or their successors and assign, never received a patent or otherwise acquired title to said lands. Upon effecting the cancellations provided for in this and the preceding section, all assessments, certificates of sale and deeds the subject of such cancellation shall be null and void. (1905.)

Effect of cancellation.

History: Added March 23, 1901 (Statutes 1901, p. 650); took effect immediately. Amended March 8, 1905 (Statutes 1905, p. 90); took effect sixty days after passage.

NOTE.—See law for cancellation of erroneous assessments of "state lands," cited after section 3788, *ante*.

Correction of errors in certificates of sale and deeds.

3805b. When real property has been correctly assessed and sold to the state for delinquent state and county taxes, any misstatement of facts or clerical errors occurring or appearing in the certificate of sale, or in the deed issued thereon, may be corrected by the tax collector, or his successor in office, upon an order of the board of supervisors, entered upon its minutes directing correction, by the issuance of a new or amended certificate of sale, or tax deed, when it can be determined by the assessment and subsequent proceedings what was originally intended. When a new or amended certificate of sale or tax deed is issued under these provisions, such certificate or deed shall be in letters and figures, as far

as practicable, the same as the original, excepting as to the correction of the error or omission, and shall also contain a statement giving reasons for the issuance of the new or amended certificate of sale or deed. The provision herein relative to correction of errors in certificates of sale and deeds shall apply only to all sales of property heretofore or hereafter made wherein the state was or is the purchaser. When any assessment, sale to the state, certificate of sale or deed to the state is canceled under this or the preceding two sections, the clerk of the board of supervisors shall immediately notify the controller of such cancellation. (1915.)

History: Added March 23, 1901 (Statutes 1901, p. 651); took effect immediately. Amended May 20, 1915 (Statutes 1915, p. 691); in effect August 8, 1915.

3806. If the collector discovers before the sale that on account of irregular assessment, or of any other error, any land ought not to be sold, he must not offer the same for sale; and the board of supervisors must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon. (1872.)

Land irregularly assessed not to be sold.

History: Original section; took effect March 16, 1872.

3807. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable. (1872.)

What mistakes do not affect sales of property for taxes.

History: Original section; took effect March 16, 1872.

3808. If any person removes from one county to another, after being assessed on personal property, the assessor of the county in which he was assessed may employ an attorney to sue for and collect the same in the assessor's name; but such assessor shall not be relieved from the provisions of this chapter. (1895.)

Collection of taxes from persons assessed but removed to another county.

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 332); took effect immediately.

3809. On the trial a certified copy of the assessment, signed by the auditor of the county where the same was made, with the affidavit of the collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is primary evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid. (1872.)

Collection of taxes from persons assessed but removed to another county.

History: Original section; took effect March 16, 1872.

3810. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 332); took effect immediately.

3811. Repealed. (1895.)

Repealed.

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 332); took effect immediately.

Repealed.

3812. Repealed. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150) ; took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 332) ; took effect immediately.

Subsequent assessment of property sold to state for taxes.

3813. In case property assessed for taxes is purchased by the state, pursuant to provisions of section three thousand seven hundred and seventy-one of this code, it shall be assessed each subsequent year for taxes until a deed is made to the state therefor in the same manner as if it had not been so purchased. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150) ; took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 21) ; took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 332) ; took effect immediately.

In case of subsequent assessment no sale to be had.

3814. In case an assessment is made under the provisions of section three thousand eight hundred and thirteen of this code, and the lands are not redeemed from a previous sale had under section three thousand seven hundred and seventy-one, as provided by law, no sale shall be had under the assessment authorized by said section three thousand eight hundred and thirteen. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150) ; took effect immediately. Amended March 28, 1895. (Statutes 1895, p. 322) ; took effect immediately.

Redemption of property, what must be paid.

3815. In case property is sold to the state, pursuant to section three thousand seven hundred and seventy-one of this code, and is subsequently assessed pursuant to section three thousand eight hundred and thirteen of this code, no person shall be permitted to redeem from such sale, except upon payment of the amount of such subsequent assessments, costs, fees, penalties, and interest. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150) ; took effect immediately. Amended March 28, 1895 (Statutes 1895 p. 332) ; took effect immediately.

Distribution of moneys received under redemption.

3816. Whenever property sold to the state, pursuant to the provisions of this chapter, shall be redeemed as herein provided, the moneys received on account of such redemption shall be distributed as follows: The original and subsequent taxes, and percentages, penalty, and the interest paid on redemption, shall be apportioned between the state and county, or city and county, in the same proportion that the state rate bears to the county, or city and county, rate of taxation; the additional penalties received on account of delinquency, together with the costs, shall be paid into the treasury for the use and benefit of the county, or city and county; the total amount received for state poll tax shall be paid to the state, without deduction of any percentages; the amounts received for road or hospital poll tax, and the amounts received for school, or road district, or other taxes, together with the penalties thereon, shall be paid into the county treasury, and placed to the credit of the proper funds. The county treasurer and auditor shall each keep an accurate account of any and all moneys received in pursuance of this section, and shall at the time the treasurer is required to settle with the state, in pursuance of sections three thousand eight hundred and sixty-five, three thousand eight hundred and sixty-six, and three thousand eight hundred and

Treasurer and auditor to keep accurate account of all moneys received.

sixty-eight, made a detailed report, verified by their affidavit, of each account, year for year, to the controller of state, in such form as the controller may desire. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 150); took effect immediately. Amended March 28, 1878 (Amendments to Codes 1877-78, p. 65); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 449); took effect July 1, 1891. Amended February 25, 1895 (Statutes 1895, p. 21); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 333); took effect immediately.

3817. In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if not so assessed, then upon the value of the property as assessed in the year nearest the time of such redemption, with interest from the first day of July following each of said years, respectively, at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and penalties as follows, to wit: Ten per cent if redeemed within six months from the date of sale; twenty per cent if redeemed within one year therefrom; thirty per cent if redeemed within two years therefrom; forty per cent if redeemed within three years therefrom; forty-five per cent if redeemed within four years therefrom; and fifty per cent, if redeemed within five or any greater number of years therefrom. The penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year, if there had been no previous sales thereof.

The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of said receipts to the state controller, and one to the county auditor, taking their receipts therefor.

The county treasurer shall settle for the moneys received as for other state and county moneys. Upon the payment of the money specified in said certificate, and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed or certificate of sale that may have been made to the state shall become null and void, and all right, title and interest acquired by the state, under and by virtue of the tax sale, shall cease and determine. Upon consummation of the redemption, the auditor shall report same to the recorder, whereupon the recorder shall, without payment of fee, note on the margin of the certificate of sale, or deed, if issued, the fact of such redemption, date thereof and by whom redeemed.

General law relating to redemption of property sold to state.

Interest.

Prior and subsequent taxes.

Penalties on redemption.

Penalty, how computed.

Auditor to make estimates.

Settlement of treasurer.

Effect of redemption.

Duty of auditor and recorder.

Receipts
may be
recorded.

"State
lands."

The receipt of the controller may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by such deed or certificate of sale.

This act shall apply to state lands sold by the state when the full amount of the purchase price has not been paid to the state therefor, except when the deed to the state, provided for in section three thousand seven hundred and eighty-five, has been filed with the surveyor general, and an application has been filed therefor in that office. (1909.)

History: Added March 2, 1883 (Statutes 1883, p. 23); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 22); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 333); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 433); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 651); took effect immediately. Amended March 20, 1905 (Statutes 1905, p. 499); took effect sixty days after passage. Amended February 22, 1909 (Statutes 1909, p. 42); took effect sixty days from passage.

NOTE.—With reference to the provisions as to state school lands in the foregoing section, see *Curtin vs. Kingsbury*, 31 Cal. App. 57, 61.

Partial re-
demption
of property
from de-
redemption
linquent
tax sale,
how made.

3818. In all cases where a lot, piece, or parcel of land contained in any assessment has been sold or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, a partial redemption may be made, separately from the whole assessment, of any such lot, piece or parcel of land as follows:

If such lot, piece or parcel of land has a separate valuation on the assessment roll, such partial redemption shall be made in the manner following: In the estimate provided for in the preceding section, the auditor shall estimate the amount of state and county taxes due on such lot, piece or parcel of land, together with a proper proportion of the taxes due on personal property under such assessment, and of the taxes due each school, road, lesser or other taxation district; and such redemption shall be made in the manner provided for in the preceding section.

If such lot, piece or parcel of land does not have a separate valuation on the assessment roll, the auditor shall investigate and ascertain the relative or proportionate value such lot, piece or parcel of real property bears to the whole tract assessed, and the auditor shall estimate the amount of such taxes due on such lot, piece or parcel of land according to such relative or proportionate value and the taxes due on any improvements on the portion sought to be so redeemed, together with a relative proportion of the taxes due on personal property under such assessment, and of the taxes due each school, road, lesser or other taxation district; whereupon such redemption shall be made in the manner provided for in the preceding section; *provided*, that no lot, piece or parcel of land owned or claimed under contract by the person so redeeming shall be divided for the purpose of such redemption. A notice by registered mail of the proposed division must be given by the auditor to the person or persons to whom the same was assessed, if known to the auditor, if not so known, by posting a notice of such proposed division for a period of twenty days in three public places in said county, and if no protest against said division be filed with the auditor within twenty days from the date of the posting or mailing of such notice, the auditor shall thereupon issue an estimate as above stated. In cases where written protest is filed within said twenty days to said division, the auditor shall withhold his estimate and refer the matter to the board of supervisors for decision. The board of supervisors shall set a time for hearing said protest, and cause a notice of the date of said hearing to be mailed by its clerk to the person or

persons who have filed a written protest with the auditor, as above provided, at the post-office address named in such protest, at least five days prior to the date of such hearing, and at the termination of said hearing may confirm the act of the auditor or modify or set aside the same and its decision in the premises shall be final. In the event of such reference to the board of supervisors and of their dividing the assessment, the estimate of the auditor shall conform to the action of the board. A partial redemption may be made in like manner, separately from the whole assessment, of an undivided interest in any real property, if such property has a separate valuation on the assessment roll; the auditor estimating the amount of taxes due on such undivided interest according to the proportion which such interest in said real property bears to the whole assessment. The recorder shall note, on the margin of the record of the certificate of sale a description of the property or undivided interest redeemed under this section, and shall specifically set forth the several amounts of taxes paid upon such redemption. (1917.)

History: Added March 19, 1889 (Statutes 1889, p. 338); took effect sixty days from passage. Repealed February 25, 1895 (Statutes 1895, p. 23); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 334); took effect immediately. Added April 1, 1897 (Statutes 1897, p. 434); took effect immediately. Amended June 1, 1917 (Statutes 1917, p. 1633); in effect July 31, 1917.

3819. At any time after the assessment book has been received by the tax collector, and the taxes have become payable, the owner of any property assessed therein, who may claim that the assessment is void in whole or in part, may pay the same to the tax collector under protest, which protest shall be in writing, and shall specify whether the whole assessment is claimed to be void, or if a part only, what portion, and in either case the grounds upon which such claim is founded and when so paid under protest, the payment shall in no case be regarded as voluntary payment, and such owner may at any time within six months after such payment bring an action against the county, in the superior court, to recover back the tax so paid under protest: *provided, however,* that no recovery shall be had in any such action unless such action be brought by such owner or his guardian, or in case of his or her death, by his or her executor or administrator; *and provided, further,* that no recovery shall be had in such action if the same be brought by an assignee of such owner, or by any one other than the persons last hereinabove designated. And if it shall be adjudged that the assessment, or the part thereof referred to in the protest, was void on the ground specified in the protest, judgment shall be entered against such county therefor; *provided,* that no assessment shall be declared void on account of deductions being made for mortgages where part payments have been made and not released upon the record. On the payment of any such judgment, such part of the tax recovered thereby as may have been paid by the county treasurer into the state treasury, shall be regarded as an amount due the county from the state, and shall be deducted in the next settlement had by the county with the controller; such deductions to be made in the manner that other deductions are made, as provided in section three thousand eight hundred and seventy-one of this code. (1913.)

History: Added February 27, 1893 (Statutes 1893, p. 32); took effect sixty days from passage. Amended March 28, 1895 (Statutes 1895, p. 335, took effect immediately. Amended June 16, 1913 (Statutes 1913, p. 948); in effect August 10, 1913.

Payment of taxes under protest on void assessments.

Protest, specify what.

Action may be commenced. Proviso.

Reimbursement of county.

CHAPTER VIII.

COLLECTION OF TAXES ON CERTAIN
PROPERTY.

3820. Mandatory that assessor must collect certain taxes.
 3821. Time of and manner of collecting such taxes.
 3822. Citing laws applicable to seizure and sale.
 3823. What rate of tax governs such collections.
 3824. Excess collection, disposition of.
 3825. Deficiency collection; to be collected by tax collector.
 3826. Assessor to settle monthly with auditor.
 3827. Auditor to note what assessments are paid.
 3828. Auditor to note excess or deficiency taxes.
 3829. Compensation of assessor for collecting.
 3830. Repealed March 28, 1895.
 3831. Liability of assessor for non-collection of personal property taxes.

Assessor
must collect
certain per-
sonal prop-
erty taxes.

3820. The assessor must collect the taxes on all property when, in his opinion, said taxes are not a lien upon real property sufficient to secure the payment of the taxes. The taxes on all assessments of possession of, claim to, or right to the possession of land, shall be immediately due and payable upon assessment, and shall be collected by the assessor as provided in this chapter. (1897.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 152); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 335); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 435); took effect immediately.

Assessor
may col-
lect by
seizure
and sale.

3821. In the case provided for in the preceding section, at the time of making the assessment, or at any time before the first Monday of August following the assessment, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed, or if no personal property can be found, then the assessor may collect the taxes by seizure and sale of the right to the possession of, claim to or right to the possession of the land. (1905.)

History: Original section took effect March 16, 1872. Amended April 1, 1897 (Statutes 1897, p. 435); took effect immediately. Amended March 20, 1905 (Statutes 1905, p. 470); took effect immediately.

Laws appli-
cable to
seizure and
sale.

3822. The provisions of sections three thousand seven hundred and ninety-one, three thousand seven hundred and ninety-two, three thousand seven hundred and ninety-three, three thousand seven hundred and ninety-four, three thousand seven hundred and ninety-five, and three thousand seven hundred and ninety-six apply to such seizure and sale. (1872.)

History: Original section; took effect March 16, 1872.

Personal
property
taxes to be
collected;
what rates
govern.

3823. In the enforcement of the provisions of section three thousand eight hundred twenty of this code the assessor shall be governed, as to the amount of taxes to be collected by him on property mentioned in said section, by the state rate (if any), the county rate, the special school district, road district, and other local district rates for the locality in which such property is taxable for the previous year; *provided*, that for the assessment year one thousand nine hundred fifteen, beginning on the first Monday in March of said year, no collection of state taxes shall be made by the assessor in aid of the Panama-Pacific International Exposition under

the provisions of section twenty-two of article four of the constitution of California, as amended November 8, 1910. (1915.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 152); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 335); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 653); took effect immediately. Amended March 4, 1911 (Statutes 1911, p. 272); took effect immediately. Amended January 30, 1915 (Statutes 1915, p. 14); in effect immediately.

3824. When the rate is fixed for the year in which such collection is made, then, if a sum in excess of the rate has been collected, such excess shall not be apportioned to the state, but the whole thereof shall remain in the county treasury, and must be repaid by the county treasurer to the person from whom the collection was made, or to his assignee, on demand therefor. (1885.)

History: Original section took effect March 16, 1872. Amended March 10, 1885 (Statutes 1884-85, p. 57); took effect immediately.

3825. If a sum less than the tax at the rate fixed upon the valuation thereof after equalization, has been collected, the deficiency must be collected by the tax collector either by a sale of the property on which the same is a lien, if any, in the same manner as other taxes on real and personal property are collected, or by seizure and sale of any personal property owned by the person against whom the tax is assessed, in the same manner provided in sections thirty-eight hundred and twenty-one and thirty-eight hundred and twenty-two for the seizure and sale by the assessor; *provided*, that no action shall be maintained to collect such deficiency unless the tax collector shall, at least fifteen days before the commencement of such action, deposit in the United States post office, addressed to the person owing such tax, at his last known place of residence, a notice in writing, informing him of the amount and nature of such tax, and that unless the same is paid within fifteen days action will be brought for the same; and any action commenced without such notice shall be dismissed. (1901.)

History: Original section took effect March 16, 1872. Amended April 1, 1897 (Statutes 1897, p. 435); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 653); took effect immediately.

3826. The assessor, on the first Monday in each month, must make a settlement with the auditor, and must pay into the county treasury all moneys collected by him for such taxes during the preceding month. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 335); took effect immediately.

3827. The auditor must, as soon as the "assessment book" for the year comes into his hands, note opposite the name of each person from whom taxes have been collected the amount thereof. (1872.)

History: Original section took effect March 16, 1872.

Excess taxes collected to be returned to taxpayer.

Deficiency tax, how collected.

Before action can be commenced, notice to delinquent must be given.

Assessor must settle monthly with auditor.

Auditor to note certain personal property taxes on assessment book.

Auditor
must com-
pute and
enter "ex-
cess" or
"defi-
ciency."

3828. As soon as the rate of taxation for the year is fixed, the auditor must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency. (1872.)

History: Original section took effect March 16, 1872.

Assessor's
compensa-
tion for
collecting
personal
property
taxes.

3829. For services rendered in the collection of taxes under section three thousand eight hundred and twenty, the assessors of the several counties, or cities and counties, shall receive such compensation as the act governing salaries of county officers may provide. (1895.)

History: Original section took effect March 16, 1872. Amended March 24, 1874 (Amendments to Codes 1873-74, p. 153); took effect immediately. Amended March 28, 1878 (Amendments to Codes 1877-78, p. 65); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 335); took effect immediately.

Repealed.

3830. Repealed. (1895.)

History: Added March 22, 1872 (Statutes 1871-72, p. 586); took effect immediately. Repealed March 28, 1895 (Statutes 1895, p. 336); took effect immediately.

Duty of
auditor in
relation to
noncollec-
tion of
personal
property
taxes.
To state an
account.

Assessor
must settle
for such
taxes.

District
attorney to
begin action
against
assessor.

3831. Within fifteen days after the first Monday in August of each year, the auditor of the county, or city and county, must make a careful examination of the assessment book or books of the county, or city and county, and ascertain therefrom the amount or amounts of all taxes that should have been collected by the assessor in pursuance of this chapter, and which have not been collected. He must then state an account to the assessor, and demand from him that the amount or amounts so remaining uncollected shall be paid into the county treasury within fifteen days from the date of said demand. If, at the expiration of said time, the assessor has not settled for and paid said amount or amounts into the treasury as aforesaid, the district attorney must commence an action in the proper court against the assessor and his bondsmen, for the recovery of said amount or amounts so remaining uncollected; and upon the trial of such action no defense shall be admissible, except that the assessment or assessments are illegal, invalid, or void. (1895.)

History: Added March 28, 1895 (Statutes 1895, p. 336); took effect immediately.

CHAPTER IX.

POLL TAXES

- 3839. Persons liable for poll tax.
- 3840. When to be collected by assessor.
- 3841. Treasurer to have blank poll tax receipts printed.
- 3842. Style of blank to be changed each year.
- 3843. Treasurer to sign and deliver blank receipts to auditor, when.
- 3844. Auditor to sign blank receipts and keep record thereof.
- 3845. Auditor to deliver blank receipts to assessor, when.
- 3846. Polls may be collected by seizure and sale.
- 3847. Mode of conducting sale.
- 3848. Debtors of persons owing polls to pay polls for such persons.
- 3849. Meaning of debtors.
- 3850. Debtors may charge creditors for poll tax paid.
- 3851. Delivery of poll tax receipt.
- 3852. Receipt the only evidence of payment.
- 3853. Assessor to settle with auditor monthly.
- 3854. Assessor to return to auditor unsold poll tax receipts.
- 3855. Auditor to return to treasurer unsold poll tax receipts.
- 3856. Treasurer to credit auditor with unsold poll tax receipts.
- 3857. Assessor to keep roll of persons liable for poll tax.
- 3858. Such roll to be returned to auditor, who must add penalty.
- 3859. Supervisors to purge roll.
- 3860. Poll tax to be a lien on property, when.
- 3861. Proceeds of poll tax for exclusive use of state school fund.
- 3862. Compensation of assessor for collecting poll taxes.

NOTE.—Since the amendment of section 12 of article XIII of the constitution in November, 1914—whereby the levy or collection of poll taxes or other head taxes is forbidden—sections 3839 to 3862, inclusive, are inoperative, and were repealed May 11, 1917 (Statutes 1917, p. 427); in effect July 27, 1917.

CHAPTER X.

SETTLEMENT WITH CONTROLLER, AND PAYMENTS INTO STATE TREASURY.

3865. Treasurers to settle with controller upon his order.
 3866. Time when treasurers shall make settlement.
 3867. Penalty for treasurer neglecting to settle.
 3868. Auditor to render reports to controller.
 3869. Reports, how transmitted, and to whom delivered.
 3870. Penalty for auditor on failure to make reports.
 3871. Controller to allow deductions in settlements for mileage, etc.
 3872. Manner of making payments into state treasury.
 3873. Controller's entries on reports; contain what.
 3874. Treasurer must file copy of report with auditor.
 3875. Auditor to make certain entries on settlement.
 3876. Mileage allowed treasurer for settlement.
 3877. Controller may examine books of officers in relation to revenue.
 3878. Revenue officer guilty of fraud, to be prosecuted.
 3879. Controller may designate county for trial of actions.
 3880. Other counsel may be employed; expenses, how paid.

County
treasurers to
settle with
controller
upon his
order.

3865. The treasurer of the respective counties must at any time, upon the order of the controller and treasurer of state, settle with the controller, and pay over to the treasurer all moneys in their possession belonging to the state. (1872.)

History: Original section took effect March 16, 1872. (Section is based on statute of 1869-70, p. 423.)

Time when
treasurers
must settle
with state.

3866. The treasurers of all of the counties, and cities and counties, of this state, must, between the fifteenth and thirtieth days of December and May of each year, proceed to the state capitol and settle in full with the controller of state, and pay over in cash to the treasurer of state all funds belonging to the state which have come into their hands as county treasurers before the close of business on and including the first Monday of said months, except principal and interest received on account of state school lands which shall be settled for up to and including the last day of the month prior to the month of settlement. If, in the opinion of the controller of state, it appears from the report of the county auditor that sufficient taxes or other revenues have not been collected to make it for the interest of the state that a settlement should be made, the controller shall defer the settlement until the next regular settlement. No mileage, fees, or commissions shall be allowed any officer for any deferred settlement; *provided*, that in case any settlement is so deferred, the county auditor, in his next report to the controller of state, shall include therein all moneys required to be reported since the date of his last report upon which a settlement was made. (1915.)

Controller
may defer
settlements.

Duty of
auditor
when settle-
ment has
been de-
ferred.

History: Original section took effect March 16, 1872. (Section is based on statute of 1869-70, p. 423.) Amended March 30, 1874 (Amendments to Codes 1873-74, p. 165); took effect immediately. Amended March 30, 1876 (Amendments to Codes 1875-76, p. 64); took effect sixty days from passage. Amended March 28, 1878 (Amendments to Codes 1877-78); p. 66); took effect immediately. Amended March 31, 1891 (Statutes 1891, p. 450); took effect July 1, 1891. Amended February 28, 1893 (Statutes 1893, p. 56); took effect immediately. Amended June 20, 1915 (Statutes 1915, p. 600); in effect August 8, 1915.

Penalty for
treasurer to
refuse or
neglect to
make set-
tlement.

3867. Every county treasurer who neglects or refuses to appear at the office of the controller and treasurer at the time specified in this chapter, and then and there to settle and make payment as required by this chapter, shall forfeit to the State of California one thousand dollars,

to be recovered in an action brought by the attorney general in the name of the controller. (1895.)

History: Original section took effect March 16, 1872. (Section is based on statute of 1869-70, p. 423.) Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately.

3868. The auditor of each county, between the first and tenth day of each month in which the treasurer of his county is required to settle with the controller, must make, in duplicate, and verify by his affidavit, a report to the controller of state, in such form as the controller may desire, showing specifically the amount due the state from each particular source of revenue at the close of business on and including the first Monday of the month in which settlement is required, except principal and interest received on account of state school lands, which shall be reported up to the end of the previous month. (1893.)

History: Original section took effect March 16, 1872. Amended March 28, 1878 (Amendments to Codes 1877-78, p. 66); took effect immediately. Amended February 28, 1893 (Statutes 1893, p. 55); took effect immediately.

3869. The auditor must at once transmit by mail or express to the controller one copy of the report, and must deliver the other to the treasurer of his county. (1872.)

Auditor must prepare, in duplicate, statement of moneys due state.

History: Original section took effect March 16, 1872.

3870. Every auditor who fails or refuses to make and transmit the report required by this chapter, or any report or statement required by this title, forfeits to the State of California one thousand dollars, to be recovered in an action brought by the attorney general in the name of the controller. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately.

3871. In the settlement, the controller must deduct the mileage allowed to the county treasurer in making settlement, the state's portion of the repayments made under section three thousand eight hundred and twenty-four, the state's portion of all amounts refunded under section three thousand eight hundred and four, and any other amounts due the county, or city and county. (1895.)

History: Original section took effect March 16, 1872. (Original section based on statute 1869-70, p. 424.) Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately.

3872. The manner of making payments into the state treasury is prescribed by sections four hundred and thirty-three, four hundred and thirty-four, four hundred and fifty-two, and four hundred and fifty-three of this code. (1872.)

Manner of making payments into state treasury.

History: Original section took effect March 16, 1872.

3873. The controller must, after the treasurer has made settlement and payment, enter upon each copy of the auditor's report a statement showing:

1. The amount of money by the county treasurer paid into the state treasury.

2. The amounts authorized to be deducted under section three thousand eight hundred and seventy-one.

Controller must make certain entries on settlement report and return one copy to county treasurer.

And must then return one copy of the report to the county treasurer. (1895.)

History: Original section took effect March 16, 1872. (Original section based on statute of 1869-70, p. 423.) Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately.

Treasurer must file statement with auditor.

3874. The county treasurer must file with the auditor of his county the copy returned to him by the controller. (1872.)

History: Original section took effect March 16, 1872.

Auditor to make certain entries.

3875. The auditor must then make the proper entries in his account with the treasurer. (1872.)

History: Original section; took effect March 16, 1872. (Original section based on statute of 1869-70, p. 423.)

Treasurer's expenses for settlement, how paid.

3876. The county treasurer in the settlement shall receive from the state his actual expenses necessarily incurred in making the trip from the county seat to Sacramento and return to the county seat. The sum of seven thousand five hundred dollars is hereby continuously appropriated from the state treasury for each fiscal year to carry out the provisions of this section. The controller is hereby authorized to draw his warrant in favor of the respective county treasurers on consummation of the settlement with the state and the treasurer of state is directed to pay the same. (1915.)

History: Original section took effect March 16, 1872. Amended May 18, 1915 (Statutes 1915, p. 499); in effect August 8, 1915.

Controller may examine books of officers.

3877. The controller may examine the books of any officer charged with the collection and receipt of state taxes. (1872.)

History: Original section took effect March 16, 1872.

When officer has been guilty of defrauding state.

3878. If he believes any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the attorney general, or other counsel, to prosecute the delinquent. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately.

Controller may designate county in which action shall be tried.

3879. When any law in relation to the revenue of the state has been so far violated as to require the prosecution of the offender for a criminal offense, or proceedings against him by civil action, the controller may designate the county in which the prosecution or proceeding may be had. (1872.)

History: Original section; took effect March 16, 1872.

Other counsel may be employed; expenses, how paid.

3880. The controller or attorney general may employ other counsel than the district attorney, and the expenses must be audited by the board of examiners and be paid out of the state treasury. (1872.)

History: Original section; took effect March 16, 1872.

CHAPTER XI.

MISCELLANEOUS PROVISIONS.

3881. Clerical errors and omissions may be corrected, how and when.
 3882. Omissions, etc., in delinquent list, how corrected.
 3883. Publication of corrected delinquent list, etc.
 3884. Certain letters, abbreviations, etc., may be used.
 3885. No assessment illegal on account of informality, etc.
 3886. Repealed March 28, 1895.
 3887. Repealed March 22, 1880.
 3888. Taxes, in what payable.
 3889. Annual settlements of county officials.
 3890. Certain officers must separately perform duties of their office.
 3891. Explanatory of general revenue acts and laws.
 3892. Taxes assessed before code takes effect.
 3893. Repealed March 28, 1895.
 3894. Repealed March 28, 1895.
 3895. Repealed March 28, 1895.
 3896. Repealed March 28, 1895.
 3897. Procedure for sale of property, after having been deeded to the state for delinquent taxes.
 3898. Distribution of moneys received from such sales. Tax collector to execute deed to purchaser.
 3898a. Real estate under mortgage to regents of state university.
 3899. Collection of taxes by action, when and how.
 3900. Actions, who to commence and how to prosecute.

3881. Defects in descriptions or defects in form or clerical omissions of the assessor, or clerical errors of the assessor, in any assessment book, when it can be ascertained from the assessment book, or from the assessor's maps or block books, or other papers in the assessor's office, what was intended, or what should have been assessed, may, with the written consent of the district attorney, be supplied or corrected by the assessor at any time after the assessment was made, prior to the sale for delinquent taxes; *provided*, that where said change will decrease the amount of taxes charged against the taxpayer by reason of said assessment, the consent of the board of supervisors shall also be necessary to said change; *and provided, further*, that where said change will increase the amount of taxes charged against the taxpayer by reason of said assessment, the person so charged shall be given at least five days' notice of the time when the matter will be heard by the board of supervisors and he may at such time present any objections he may have to such change to the board of supervisors, and their decision in the matter shall be conclusive. The date and nature of every such correction shall be entered on the assessment book opposite said assessment and the written authority therefor shall be filed by the assessor with the auditor and preserved by the auditor as a public record, and he shall make the proper charges or credits in his account with the tax collector. In the city and county of San Francisco the written consent of the city attorney shall have the same force and effect as the written consent of the district attorney. (1917.)

History: Original section took effect March 16, 1872. Amended April 3, 1876 (Amendments to Codes 1875-76, p. 59); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 337); took effect immediately. Amended March 23, 1901 (Statutes 1901, p. 653); took effect immediately. Amended March 21, 1907 (Statutes 1907, p. 755); took effect immediately. Amended May 26, 1917 (Statutes 1917, p. 968); in effect July 27, 1917.

3882. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication. (1872.)

History: Original section took effect March 16, 1872.

Notice,
how pub-
lished.

3883. The publication must be made in the same manner as the original publication, and for not less than one week. (1872.)

History: Original section took effect March 16, 1872.

Abbrevia-
tions may
be used.

3884. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations, and the figures may be used to designate the township, range, section or part thereof, and such other abbreviations as may be approved by the state board of equalization; *provided*, a written or printed explanation of such abbreviations shall appear on each page of the assessment roll or book. (1901.)

History: Original section took effect March 16, 1872. Amended March 23, 1901 (Statutes 1901, p. 654); took effect immediately.

Informality
does not
vitiate
assessment.

3885. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law. (1872.)

History: Original section took effect March 16, 1872.

Repealed.

3886. Repealed. (1895.)

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

Repealed.

3887. Repealed. (1880.)

History: Original section took effect March 16, 1872. Repealed March 22, 1880 (Amendments to Codes 1880, p. 17); took effect immediately.

Taxes, in
what coin
payable.

3888. Taxes must be paid in the lawful money of the United States. A tax levied for a special purpose may be paid in such funds as may be directed. (1895.)

History: Original section took effect March 16, 1872. Amended March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

County
officers to
make an-
nual set-
tlement.

3889. Every assessor, district attorney, and county treasurer must annually, on the first Monday of January, make a settlement with the county auditor of all transactions connected with the revenue for the previous year. (1872.)

History: Original section took effect March 16, 1872.

Officers
must sep-
arately per-
form the
functions of
their office.

3890. The treasurer, tax collector, assessor, clerk of the board of supervisors, and each member of the board must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this title. (1872.)

History: Original section took effect March 16, 1872.

“Explan-
atory.”

3891. [NOTE.—This section is simply explanatory of the revenue laws and system adopted in 1872.]

History: Original section took effect March 16, 1872.

Taxes
assessed
when code
takes effect.

3892. All taxes assessed before this code takes effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this code had not been passed. (1872.)

History: Original section took effect March 16, 1872.

3893. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

3894. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

3895. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

3896. Repealed. (1895.)

Repealed.

History: Original section took effect March 16, 1872. Repealed March 28, 1895 (Statutes 1895, p. 338); took effect immediately.

3897. Whenever the state shall have become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided in section three thousand seven hundred and eighty-five, the controller may thereupon by a written authorization direct the tax collector of the county or city and county to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county or city and county, one of which shall be at the United States post office nearest the land, in addition to a notice conspicuously posted on the land itself for the same period. Such notices must state specifically the place of and the day and hour of sale and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs, interest, and expenses up to the date of such sale and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof and said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax collector to mail within five days after the publication of said notice of sale a copy of said notice, postage thereon prepaid and registered, to the party to whom the land was last assessed next before the sale, at his last known post-office address. At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property and all costs and penalties for every year delinquent as shown by the delinquent rolls for said years to the date of the execution of the deed to the state, and all expenses accrued to the date of the sale under this section, together with interest at seven per cent per annum from the first day of July following delinquency in each of said years to the date of the sale hereunder, computed upon the aggregate amount of such delinquent taxes, penalties and costs; *provided, however,* that if the board of supervisors of the county, or city and county, in which any such property is situate, shall, by resolution entered upon their minutes, declare that, in their judgment, the property so owned by the state, and particularly described in said resolution, is not at that time of value great enough that it can be sold by the state for a sum equal to the amount of

Sale of property deeded to state for delinquent taxes.

Manner of giving notice of sale.

Notice must specify what.

Must register notice.

Sale.

Amount that may be bid.

Proviso that supervisors may reduce price by ordinance.

all taxes levied upon said property, and all interests, costs and penalties and expenses up to the date of such sale, and that it would be to the best interest of the state to sell the said property for a sum to be stated in said resolution, less than the sum above named, upon receipt of a copy of said resolution, certified by the clerk of said board of supervisors, the state controller may thereupon, by written authorization, direct the tax collector of the county, or city and county, to sell the said property so described in said resolution for a sum not less than the sum stated in said resolution, together with the expenses of sale. The expense of giving the notice herein required shall be a charge against the property so advertised, and shall be collected by the collector, and no redemption of such property before said sale may be had without payment of such cost of advertising; and to secure the payment of such advertising cost the collector shall demand in advance from the party or parties seeking to purchase, a deposit with said officer of a sum sufficient to defray such cost of advertising, which deposit shall be forfeited in the event said party or parties fail or refuse to purchase at such sale; *provided*, that if the party or parties so depositing fail to secure such property on their bid, such deposit shall be returned, and such advertising cost shall be collected from the successful purchaser; *provided, also*, that if the board of supervisors of the county, or city and county, in which the property is situated shall by resolution entered upon the minutes, direct the tax collector to apply for an authorization of sale of any property which has been deeded to the state, and shall authorize him to order the necessary advertising to be done at county expense, the tax collector shall thereupon proceed as though a deposit had been made to cover advertising costs, and shall add a proportionate part of the total expense of advertising to the amount of taxes, penalties and interest chargeable against each tract or parcel sold. In any case in which no sale is made, the advertising shall be charged and paid as are other county charges. (1913.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 153); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 338); took effect immediately. Amended April 1, 1897 (Statutes 1897, p. 436); took effect immediately. Amended March 1, 1905 (Statutes 1905, p. 31); took effect sixty days from passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913.

Distribution of moneys received from sale.

3898. 1. The moneys received from such sale shall be distributed as follows: The tax collector shall deduct the penalties, costs and other amounts received as expenses of such sale in such cases as the property so sold shall have been sold for a sum not less than the amount of all taxes levied thereon and all interest, costs, penalties and expenses up to the date of such sale, but where the property so sold shall have been sold for a sum less than said amount, the tax collector shall deduct only the amounts received as expenses attending such sale, and the balance shall be distributed between the state and the county, or city and county, in the proportion that the state rate bears to the county, or city and county, rate of taxation; said tax collector shall pay all amounts into the county treasury, and the treasurer shall account to the state for its portion in the settlement required by section three thousand eight hundred sixty-five and section three thousand eight hundred sixty-six.

Proviso, where sale price has been reduced.

Settle with state.

2. On receiving the amount bid, as prescribed in the preceding section, the tax collector must execute a deed to the purchaser, which deed shall be in substance and may be in form as follows:

"This indenture, made the _____ day of _____, 19____, between _____, tax collector of the county of _____, State of California, first party, and _____ of the county of _____, State of _____, second party, witnesseth:

That whereas the real property hereinafter described was duly sold and conveyed to the State of California for the nonpayment of taxes which had been legally levied and which were a lien upon said property under and in accordance with law; and

Whereas in conformity with law the State of California, acting by and through _____, tax collector as aforesaid, did offer said property, ^{of deed.} hereinafter described, for sale at public auction to the highest bidder, at which sale said second party became the purchaser of the whole thereof for the sum of \$_____.

Now, therefore, the said first party in consideration of the premises and in pursuance of the statute in such case made and provided, does hereby grant to the said second party, his heirs and assigns, that certain real property hereinbefore referred to, and situate in the _____ county of _____, State of California, more particularly described as follows, to wit:

* * * * *

In witness whereof, said first party has hereunto set his hand the day and year first above written.

-----, Tax collector of the county of _____."

No other matters need be recited in the said deed than those provided for in the above form. No charge shall be made by the tax collector for the making of any such deed, and the acknowledgment of all such deeds shall be taken by the county clerk free of charge. Said deed shall be prima facie evidence of all the facts recited therein and shall operate to convey all of the interest of the state in and to said property.

3. Within ten days after each sale as provided in the preceding section the tax collector shall report to the assessor and recorder, giving the name or names of all persons to whom deeds have been issued under the provisions of this section, together with the dates of such deeds, the amount for which the property was sold, a description of the property conveyed, together with the numbers and dates of the certificates of sale and of the tax deeds by which title to such property so granted was conveyed to the state.

4. The recorder shall note on the margin of each certificate of sale and of each tax deed involved in the sale and transfer of such property, the name of the purchaser, the date of the deed to the purchaser and the consideration named therein. The assessor shall use such report in his determination of the ownership of such property for assessment purposes.

5. (a) Whenever in any action at law, it has been or shall be determined by a court that the sale and conveyance provided for in this and the preceding section or in section three thousand seven hundred seventy-one of this code heretofore or hereafter made are void for any reason, and that the purchaser from the state may not be finally awarded the property so purchased, no decree of the court shall be given declaring a forfeiture of the property until the former owner, or other party in interest, shall

have repaid to the purchaser the full amount of taxes, penalties and costs paid out and expended by him, to be determined by the court, in pursuit of the state's title to the property so sold. The said purchaser may within one year after such decree becomes final also present a claim against the county, in the manner provided by law, for a refund of the amount paid into the county treasury as the purchase price of such property in excess of the amount for which he may have been reimbursed for taxes, penalties and costs as herein provided, and such excess shall be refunded in accordance with section three thousand eight hundred four of this code.

Same.

(b) Whenever it shall be determined to the satisfaction of the board of supervisors of the county in which the land is situated that any land belonging to the United States government or to this state, a municipality or other political subdivision of this state has been erroneously sold and conveyed under the provisions of this or the preceding section, or section three thousand seven hundred seventy-one of this code, and the said land should not have been so sold, the purchaser at said sale may present a claim against the county in the manner provided by law for a refund of the amount so paid into the county treasury by reason of such sale. (1917.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 153); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 338); took effect immediately. Amended March 1, 1905 (Statutes 1905, p. 31); took effect sixty days after passage. Amended March 19, 1907 (Statutes 1907, p. 688); took effect immediately. Amended June 10, 1913 (Statutes 1913, p. 556); in effect August 10, 1913. Amended May 18, 1917 (Statutes 1917, p. 715); in effect July 27, 1917.

Tax deed
on property
mortgaged
to uni-
versity.

Duty of
controller.

Tax col-
lector to
publish
notice
specifying
what.

If full
amount
not is paid
deed to be
made.

3898a. Whenever the state has or shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller, upon which property there appears of record a mortgage to the regents of the University of California, and such mortgage and the debt secured thereby have not been both paid in full and satisfied of record, the controller, upon receiving proof, by affidavit of the president and secretary, or acting secretary or of the treasurer of said regents, that the debt secured by said mortgage has not been fully paid, shall direct the tax collector of the county, or city and county, in which such lands are situated, to execute a deed of such lands in the name of the State of California to the regents of the University of California. Said tax collector shall thereupon publish a notice once a week for at least three successive weeks in some newspaper published in the county, or city and county in which such lands are situated, or if there be no newspaper published therein, then said tax collector shall post a notice in three conspicuous places in said county, or city and county, at least three weeks before the day to be named in said notice as hereinafter provided. Said notice must state that on or after a day therein mentioned (which day shall not be less than four weeks, and not more than eight weeks after the first publication or posting of said notice), said tax collector will execute and deliver to the regents of the University of California a deed to the property, and shall describe said property and shall state that said deed will be made because of a sale of said property to the state for delinquent taxes, and because the regents of the University of California is interested in the said property. No other matters need be contained in said notice. One or more pieces of land may be described in the affidavit, notice, deed and report herein provided for. Unless prior to the day so to be mentioned in such notice, there shall be paid to the said tax collector the full amount for which said property was sold to the state, together with all interest and penalties thereon and all expenses and costs connected therewith, and all subsequent state and county taxes not theretofore paid in full,

and all interest and penalties thereon and all costs and expenses connected therewith, and also the expense of publishing or posting said notice, as the case may be, then said tax collector shall on said day, or within ten days thereafter, execute, acknowledge and deliver such deed to said regents, without any payment, charge or fee therefor, and shall within five days thereafter report in writing to the controller the fact of the execution of such deed. In the event said notice shall describe two or more pieces of land assessed separately and sold separately to the state, then if all the payments above provided for be made within the time aforesaid in respect to any one of said pieces so separately assessed and sold, (including the entire cost of publishing or posting said notice, as the case may be), such piece so paid upon shall not be included in the deed herein provided for, and the fact of such payment and amount paid shall be stated in the said report to the controller. Such deed shall transfer, grant, convey and confirm to the regents of the University of California the entire title to such lands, free and clear of all claims and incumbrances whatsoever; but nothing herein contained shall be held to interfere with the right of said regents to enforce said mortgage or the payment of the debt secured thereby, or to procure a decree of foreclosure and a sale under such decree of all or any of the property described in such mortgage. Said deed shall recite the facts in this section provided as authorizing its execution and shall be prima facie evidence thereof and of all matters therein recited and of the ownership of said lands by said regents. Said deed may be recorded in the office of the county recorder of the county or city and county in which any such lands are situated; and upon the expiration of two years after it has been so recorded, shall (except as against parties deriving title through a sale and purchase under decree of foreclosure of such mortgage), be conclusive evidence that the complete fee-simple title to the property therein described vested at the date of said deed in the regents of the University of California, free and clear of all claims, liens, charges, and incumbrances whatsoever; *provided, however,* that in any action which may be commenced against said regents before the expiration of said two years to question the title of said regents to said property, said deed shall be prima facie evidence only. The expense of the publication and posting herein provided for shall be paid by the regents of the University of California, unless such expense should be paid to said tax collector prior to the day mentioned in said notice, as hereinabove permitted. While any mortgage to said regents appears of record and not satisfied of record, no sale of any lands therein described shall be made under the provisions of section 3897 of this Code. Any moneys which may be paid under the provisions of this section shall be distributed as provided in section 3898 of this Code. (1903.)

History: Added March 16, 1903 (Statutes 1903, p. 154); took effect immediately.

3899. The controller may, at any time after a delinquent list has been delivered to a tax collector, direct such tax collector not to proceed in the sale of any property on said list whereon the taxes shall amount to three hundred dollars or more. Upon such direction, the tax collector must make out, and deliver to the controller, a certified copy of the entries upon the delinquent list relative to such tax. The controller shall thereupon direct the attorney general to bring suit against the delinquent, in the proper court, in the name of the people of the State of California, to enforce such collection. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials, and appeals, are hereby made

In case two or more pieces advertised.

Deed conveys what title.

Proviso as to mortgage.

Recitals of deed.

Record.

Deed conclusive evidence.

Proviso, as to actions.

Expense of publication.

Expense of publication.

Distribution of moneys.

When tax amounts to \$300 or more, duty of controller.

Attorney general to commence suit for taxes.

applicable to the proceedings herein provided for. The moneys received in pursuance of this section shall be distributed as provided in the preceding section. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 153); took effect immediately. Amended February 25, 1895 (Statutes 1895, p. 23); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 339); took effect immediately.

Actions,
who to
commence
and where
to be prose-
cuted.

3900. Whenever, in this title, any official, or officials, are authorized to commence an action for the violation of any law relating to revenue, or to compel the specific performance thereof, such official, or officials, may designate the county, or city and county, in which such action shall be commenced and prosecuted. (1895.)

History: Added March 24, 1874 (Amendments to Codes 1873-74, p. 153); took effect immediately. Amended March 28, 1895 (Statutes 1895, p. 339); took effect immediately.

PENAL CODE.

TITLE XII.

19. Punishment of misdemeanor when not otherwise punishment.
 424. Embezzlement and falsification of accounts by public officers.
 425. Officers neglecting to pay over public moneys.
 426. "Public moneys" defined.
 427. Failure to pay over fines and forfeitures received a misdemeanor.
 428. Obstructing officer in collecting revenue.
 429. Refusing to give assessor list of property, or giving false name.
 430. Making false statements, not under oath, in reference to taxes.
 431. Delivering receipts for poll taxes other than prescribed by law. Collecting poll taxes, etc., without giving receipts, etc.
 432. Having blank receipts for licenses, etc., other than those prescribed by law.
 434. Refusing to give names of persons in employment, etc.
 435. Carrying on business without license.
 440. Officer charged with collection, etc., of revenue refusing to permit inspection of his books.

19. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both.

Punishment for misdemeanor.

424. Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

- Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,
- Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
- Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,
- Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,
- Wilfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority; or,
- Wilfully omits to transfer the same, when such transfer is required by law; or,
- Wilfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;

Is punishable by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any office in this state.

425. Every officer charged with the receipt, safekeeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same manner prescribed by law, is guilty of felony.

Neglect to pay over money.

426. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, or town officers in their official capacity.

Definition of "public moneys."

Failure to account for fines and forfeitures.

427. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Obstructing officer in collecting revenue.

428. Every person who wilfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

Refusing to give assessor statement of property, or giving false name.

429. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name, or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

Making false statement, not under oath, in relation to taxes.

430. Every person who, in making any statement, not under oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of any application to reduce any tax or assessment, wilfully states anything which he knows to be false, is guilty of a misdemeanor.

Receiving payment for poll taxes, etc., and not giving proper receipts.

431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

Having in possession illegal blank licenses, poll tax receipts, etc.

432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll tax receipts, other than those furnished by the controller of state or county auditor, is guilty of felony.

Refusing to give names of persons in employment.

434. Every person who, when requested by the collector of taxes or licenses, refuses to give such collector the name and residence of each man in his employment, or to give to such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

Carrying on business without license.

435. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

Officer refusing to permit inspection of books.

440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this state, who, upon demand, fails or refuses to permit the controller or attorney general to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

Citations from decisions of the California Supreme and Appellate Courts, Volumes 1 to 173 of the California Reports, and Volumes 1 to 32 of the California Appellate Reports.

ARRANGEMENT OF CITATIONS.

- I. Assessment. To whom assessed.
- II. Assessment. Severally; to whom.
- III. Assessment. To whom; owners and claimants, known and unknown.
- IV. Assessment. To whom; fiduciary.
- V. Assessment. Place; time.
- VI. Assessment. List; statement.
- VII. Assessment. Arbitrary.
- VIII. Assessment. Escaped property.
- IX. Assessment. Personal property.
- X. Assessment. Possessory rights and claims to land.
- XI. Assessment. Valuation.
- XII. Assessment. Description.
- XIII. Assessment. Description; maps, plats, etc.
- XIV. Assessment. Banks.
- XV. Assessment. Bonds.
- XVI. Assessment. Canals, ditches, etc.
- XVII. Assessment. Credits, deposits, choses in action, etc.
- XVIII. Assessment. Franchise.
- XIX. Assessment. Improvements.
- XX. Assessment. Migratory stock.
- XXI. Assessment. Mortgages.
- XXII. Assessment. Railroads.
- XXIII. Assessment. Railroad lands.
- XXIV. Assessment. Shares of stock.
- XXV. Assessment. Telegraph and telephone lines.
- XXVI. Assessment. Vessels, water craft, etc.
- XXVII. Assessment Roll.
- XXVIII. Assessment Roll. Abbreviations.
- XXIX. Assessment Roll. Dollar mark.
- XXX. Assessment Roll. Certifying.
- XXXI. Assessment Roll. Stamping "Sold to State."
- XXXII. Exemptions.
- XXXIII. Equalization.
- XXXIV. Taxation, power of.
- XXXV. Taxation, definition.
- XXXVI. Taxation, liability.
- XXXVII. Taxation, equality and uniformity.
- XXXVIII. Taxes, levy of.
- XXXIX. Taxes, lien of.
 - XL. Taxes, for support state government.
 - XLI. Taxes, school and road.
 - XLII. Taxes, collection by assessor.
 - XLIII. Taxes, payment.
 - XLIV. Taxes, payment; protest.
 - XLV. Taxes, payment, refunding, recovery.
 - XLVI. Taxes, payment, suits for.
- XLVII. Interest for delinquency.
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REVENUE LAWS OF CALIFORNIA.

I. ASSESSMENT. *To whom assessed.*

"Owner," in its general and unrestricted meaning, when used alone, means one who has full proprietorship in and dominion over property, and imports an absolute owner.

Directors of Fallbrook Irrigation District vs. Abila, 106 Cal. 355.

It is the duty of the assessor to ascertain the name of the owner of each piece or parcel of property and assess it to *him*; or, failing to ascertain the name of the owner, to assess it to "Unknown Owners."

Grotfend vs. Ultz, 53 Cal. 666; citing *Kelsey vs. Abbott*, 13 Cal. 609; *Smith vs. Davis*, 30 Cal. 537; *Blatner vs. Davis*, 32 Cal. 328.

An assessment for taxes must be made against *the owner*, when known. The *individual*, not the property, pays the tax. The property shows the amount of the tax with which to charge the owner, and is security for payment. But the assessment must be certain, as to the person taxed, as it is to the amount of the tax, and to the property.

Kelsey vs. Abbott, 13 Cal. 609;
Lachman vs. Clark, 14 Cal. 131;
Hart vs. Plum, 14 Cal. 148;
Falkner, Bell & Co. vs. Hunt, 16 Cal. 167.

County assessors are not required to investigate the titles to all property in the county and to determine who are the real owners thereof. Such questions often require the skill, research, and learning of the ablest lawyers and jurists, which assessors are not expected to have. It is sufficient for the purpose of assessment and taxation, that he finds some person in possession, or having the charge and control of the property, to authorize him to assess it in the name of such person, and to make the latter liable for such taxes, leaving him to his remedy against the real owner of the property, if any he has. The property itself is, however, also liable for the taxes.

People vs. Rains, 23 Cal. 131.

NOTE.—This decision is under the revenue act of 1861; compare with section 3628, Political Code.

There is no regular system in San Francisco for the subdivision of blocks into lots, and where the proper block is given, the assessment of any lot therein may be according to its individual ownership, and the determination of the assessor as to such ownership is not open to review, and any mistake or error therein can not invalidate the assessment.

Klumpke vs. Baker, 131 Cal. 80; distinguishing *Cadwalader vs. Nash*, 73 Cal. 43.

It is true that the code provides that "no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid"; but whatever may be the meaning of this provision, it does not apply to personal property.

City of San Luis Obispo vs. Pettit, 87 Cal. 499; citing *Lake County vs. S. B. Q. M. Co.*, 66 Cal. 17.

A mistake in the name of the owner in an assessment of real property does not invalidate the assessment, but an assessment of personal property to a person other than the owner is absolutely void.

Lake County vs. Sulphur Bank Q. M. Co. 66 Cal. 17; citing *Smith vs. Davis*, 30 Cal. 537; *Blatner vs. Davis*, 32 Cal. 328; *Kelsey vs. Abbott*, 13 Cal. 609; *People vs. Whipple*, 47 Cal. 591; *Crawford vs. Schmidt*, 47 Cal. 618. See, also, *Lake County vs. Sulphur Bank Q. M. Co.* 68 Cal. 14.

CITATIONS FROM DECISIONS OF CALIFORNIA COURTS.

I. ASSESSMENT. To whom assessed.

It is the duty of the assessor to assess property to the owner, if he can ascertain who the owner is; otherwise, to assess it to unknown owners, and proceed at once to collect the tax by seizure and sale, in the manner provided by law.

Weyse vs. Crawford, 85 Cal. 196.

NOTE.—Above refers to assessment of personal property, not to real estate.

Under the provisions of section 3628 of the Political Code, before its amendment in 1880, it was held in *Gynn vs. Dierssen*, 101 Cal. 563, that the assessment must be made to the owner, and if not known, then to unknown owners. But in *Escondido H. S. District vs. Escondido Seminary*, 130 Cal. 128, it was held that an assessment to a person not the owner does not affect its validity. To the same effect, *Klumpke vs. Baker*, 131 Cal. 80. It was said in *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 17, 20, "the ascertainment of the name of the owner is a matter with respect to which the assessor has discretionary power, and his judgement or conclusion in regard to it is final, so far as the validity of the tax is concerned." In *Klumpke vs. Baker*, 131 Cal. 80, the court said, "the name of the owner of the property assessed is an incidental provision for the sake of inconvenience, but a failure to give the correct name of the owner is declared by statute (sections 3628 and 3885, Political Code) not to impair the assessment. The assessment is not against the owner, but is of the property, and that must be correctly described."

Commercial National Bank vs. Schlitz, 6 Cal. App. 174.

In an assessment of city lots made after the amendment of 1880 to section 3628 of the Political Code, no mistake in the name of the owner or supposed owner of the property can render the assessment invalid. *The assessment is of the property and not against the owner*. The name of the owner of the property assessed is an incidental provision for the sake of convenience, but a failure to give the correct name of the owner is declared by the statute not to impair the assessment.

Klumpke vs. Baker, 131 Cal. 80; citing *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 20.

Under section 3628 of the Political Code, as amended in 1880, no mistake in the name of the owner or supposed owner of real property can render the assessment thereof invalid; and the assessment to Minto & Co., of real property standing in the name of Minto is binding upon the property assessed, and a tax deed given upon the sale of the property for delinquent taxes is valid, and passes title to the land.

Landregan vs. Peppin, 86 Cal. 122; citing *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 17, 19.

An assessment of land in the name of a deceased person made prior to the amendment of March 22, 1880, to section 3628 of the Political Code, is void.

Pearson vs. Creed, 69 Cal. 538; citing *Hearst vs. Egglestone*, 55 Cal. 366; *Crawford vs. Schmidt*, 47 Cal. 617; *Kelsey vs. Abbott*, 13 Cal. 617; *People vs. Sneath*, 28 Cal. 615.

Under section 3628 of the Political Code, the ascertainment of the name of the owner of real property is a matter with respect to which the assessor has discretionary power, and his judgement or conclusion in regard to it is final, so far as the validity of the tax is concerned.

Landregan vs. Peppin, 86 Cal. 122.

The theory of the provision of section 3628 of the Political Code is that the owner must be charged with knowledge of the property which he owns, that it is his duty to list the same for assessment and to see that he pays the taxes thereon, and that when endeavoring to ascertain the amount of his tax he must search until

REVENUE LAWS OF CALIFORNIA.

I. ASSESSMENT. To whom assessed.

he finds his property—if not in his own name, then in such name as the assessor has listed it.

Webster vs. Somer, 159 Cal. 459.

The fact that the property sold to the state for nonpayment of taxes was incorrectly assessed to one who was not the owner thereof does not invalidate such conveyance to the state. See section 3628 of the Political Code.

Hanson vs. Goldsmith, 170 Cal. 512.

Where the owner of the land was named "Castro," but the assessment was made to "Castero," the assessment was invalid.

Emeric vs. Alvarado, 90 Cal. 444; citing *People vs. Whipple*, 47 Cal. 591; *Crawford vs. Schmidt*, 47 Cal. 617; *Kelsey vs. Abbott*, 13 Cal. 609; *Smith vs. Davis*, 30 Cal. 537; *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 398.

Where the name of the person assessed appeared on the assessment roll as "E. W. Davis," a recital in the deed to the state that the name of such person was "E. W. Davies," renders the deed void, and it can not be validated by applying the rule of *idem sonans*.

Henderson vs. De Turk, 164 Cal. 296; citing *Baird vs. Monroe*, 150 Cal. 560; *Grimm vs. O'Connell*, 54 Cal. 522; *Emeric vs. Alvarado*, 90 Cal. 444.

An assessment to "Escondido Seminary," instead of to the "Regents of the Escondido Seminary," is not invalid, and can not vitiate a tax deed made thereunder.

Escondido High School vs. Escondido Seminary, etc., 130 Cal. 128; citing *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 19; *Landregan vs. Peppin*, 86 Cal. 122; *Pearson vs. Creed*, 69 Cal. 538; *Emeric vs. Alvarado*, 90 Cal. 444.

A certificate of sale and tax deed made pursuant to proceedings had under the Irrigation Act of 1897 (Statutes 1897, p. 254) are both invalid under the provision of section 35 requiring the assessment book to specify the name of the person assessed, section 45 requiring the certificate of sale to state the name of the person assessed, and section 48 requiring that "the matter recited in the certificate of sale must be recited in the deed, where the name of the person assessed appeared on the assessment book as 'D. Bruschie,' and in the certificate and deed as 'D. Bruscia.'"

Bruschi vs. Cooper, 30 Cal. App. 682; citing *Henderson vs. De Turk*, 164 Cal. 296; *Emeric vs. Alvarado*, 90 Cal. 444.

The listing of land for assessment necessarily means that the name of the owner, if known, and a description of the property assessed must be "correctly stated."

Bruschi vs. Cooper, 30 Cal. App. 682.

An assessment of land for taxes, not made to unknown owners, but to the owner by his surname, leaving blank for his given name, is void, and a deed executed to a purchaser of the land at a sale for the tax, is void.

Crawford vs. Schmidt, 47 Cal. 617; citing *Kelsey vs. Abbott*, 13 Cal. 617; *People vs. Sneath*, 28 Cal. 615. See, also, *People vs. Stockton, etc., Railroad Co.*, 49 Cal. 414.

Where the complaint alleges the ownership of the property assessed by the defendant, the defendant admits the ownership by not denying the allegation. The assessment puts the burden of proof upon the defendant.

City of Santa Barbara vs. Eldred, 108 Cal. 294.

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I. ASSESSMENT. To whom assessed.

If it be shown that the land on which the tax was assessed did not belong to the defendant, but to other persons in the actual occupation thereof, holding the title under recorded deeds, the fact establishes a legal fraud, which vitiates the entire assessment.

People vs. Castro, 39 Cal. 65.

NOTE.—Decision is based upon an assessment made under an old revenue act.

Where property was assessed to an unknown owner and sold, the fact that the agent of the owner paid taxes on the wrong property by mistake, is not such mistake as a court of equity will relieve against.

Moss vs. Mayo, 23 Cal. 421.

The legislature has the power to declare that the corporate property of a corporation shall be assessed to the corporation, and that the same property shall not again be assessed against the stockholders.

People ex rel. Burke vs. Badlam, 57 Cal. 594. See, also, *Crocker vs. Scott*, 149 Cal. 575.

A tax deed establishes the assessment *prima facie*, and it is not necessary for the grantee to show, in an action by him to quiet title, that the one to whom the property was assessed had title thereto, but the burden is on the defendant to establish the contrary.

Rollins vs. Wright, 93 Cal. 395.

A tax deed based upon an assessment of land not made to the true owner, he being known, but to a person who had no title thereto, is void.

Klumpke vs. Baker, 68 Cal. 559; citing *Hearst vs. Egglestone*, 55 Cal. 365.

NOTE.—Compare with section 3628 of the Political Code.

The recital in a tax deed as to whom the property was assessed is conclusive.

Brady vs. Dowden, 59 Cal. 51.

Taxes were properly assessed to the original purchaser of such harvester, while in his possession and control with *indicia* of ownership invested under the original purchase thereof; and the addition of other names on the assessment roll did not invalidate the assessment.

Houser and Haines Mfg. Co. vs. Hargrove, 129 Cal. 90.

The rule of *idem sonans* does not apply to assessments for taxes, and other cases where written name is material. Tax proceedings are *in invitum*, and must closely follow the statute.

Emeric vs. Alvarado, 90 Cal. 444.

Under section 1 of article XIII of the constitution, and sections 3617, 3820-3822 of the Political Code, enumerating the various kinds of real estate that are subject to taxation, and providing methods for the enforcement thereof, the estate of a lessee in lands overlying oil-bearing strata, who has the right under his lease to bore for, extract, and convert to his own use oil therefrom, upon paying a royalty to the lessor, without any right to the ordinary usufruct of the soil, may be separately assessed for purposes of taxation to the lessee, and the remainder of the entire estate in the land may be separately assessed to the lessor.

Graciosa Oil Company vs. County of Santa Barbara, 155 Cal. 140; citing *State vs. Moore*, 12 Cal. 70.

The validity of the taxes assessed against the property did not in any manner depend upon the name in which they were assessed. The assessment is of the property and not against the owner. The name of the owner of the property

REVENUE LAWS OF CALIFORNIA.

II. ASSESSMENTS. SEVERALTY; TO WHOM. III. ASSESSMENTS. TO WHOM; OWNERS AND CLAIMANTS.

assessed is an incidental provision for the sake of convenience, but a failure to give the correct name of the owner is declared by the statute not to impair the assessment.

Glowner vs. De Alvarez, 10 Cal. App. 194; citing *Klumpke vs. Baker*, 131 Cal. 80, 82.

II. ASSESSMENTS. SEVERALTY; TO WHOM.

In order that tenancy in common may exist between parties in the holding of land, it is necessary that they possess some color of title and assert their claim in some tangible way.

Robinson vs. Bledsoe, 23 Cal. App. 687.

Where land is assessed as an entirety to numerous persons, without designating the interest of any of them, it is an assessment to them as copartners, joint tenants, or tenant in common, and not as owners in severalty.

People vs. Shimmins, 42 Cal. 121.

It is the better practice to assess each particular person who claims an interest in a tract of land according to his interest or claim, and not to assess the whole tract *in solido* to all those who claim an interest in it.

People vs. Shimmins, 42 Cal. 121.

When a person holds an interest in a tract of land in severalty, he is entitled to be assessed for his particular tract only.

People vs. Shimmins, 42 Cal. 121.

Several persons may have, in the same land, a property which is subject to taxation.

State vs. Moore, 12 Cal. 56;

Kelsey vs. Abbott, 13 Cal. 609.

In proportion to their interests all tenants in common are in duty bound to pay taxes. Either of them may pay the taxes assessed against the whole estate, and such payment discharges the lien imposed upon the common interest; and no matter whether the tenant paying them intended the payment to be for his own benefit or not, such payment in fact and in law essentially inures to the benefit of the other cotenants. It discharges the lien against the common estate for the common benefit, independently of any intention of the cotenant paying it; and as all other cotenants are entitled to the benefit of such payment, they should refund to the one making it their proportion of the amount he has paid.

Willmon vs. Koyer, 168 Cal. 369.

III. ASSESSMENTS. TO WHOM; OWNERS AND CLAIMANTS, KNOWN AND UNKNOWN.

An assessment to the owner by name and "to all owners and claimants, known and unknown," is void.

Kelsey vs. Abbott 13 Cal. 609;

Smith vs. Davis, 30 Cal. 537;

Blatner vs. Davis, 32 Cal. 328;

Himmelman vs. Steiner, 38 Cal. 175;

Grotfend vs. Ultz, 53 Cal. 666;

Grimm vs. O'Connell, 54 Cal. 522;

Hearst vs. Egglestone, 55 Cal. 365;

Brady vs. Dowden, 59 Cal. 51;

City of Stockton vs. Dunham, 59 Cal. 608, 609;

McCoy vs. Morrison, 61 Cal. 363.

Hall vs. Thiesen, 61 Cal. 524;

CITATIONS FROM DECISIONS OF CALIFORNIA COURTS.

III. ASSESSMENTS. To whom; owners and claimants. IV. ASSESSMENTS. Fiduciary.

Bosworth vs. Webster, 64 Cal. 1;
Daly vs. Ah Goon, 64 Cal. 512;
Wilson vs. Atkinson, 68 Cal. 590;
Wilson vs. Atkinson, 77 Cal. 485;
Pearson vs. Creed, 78 Cal. 144;
Greenwood vs. Adams, 80 Cal. 74;
Jatunn vs. O'Brien, 89 Cal. 57;
De Frieze vs. Quint, 94 Cal. 653;
Gwynn vs. Dierssen, 101 Cal. 564;
Russ and Sons vs. Crichton, 117 Cal. 695.

The revenue act of 1857 required that property shall be assessed to the "person, firm, corporation, association, or company owning it, or having the possession, charge, or control of it, and to all owners and claimants known or unknown," and an assessment made under this provision to "Joaquin Castro and wife, and all claimants known and unknown," is valid and effective to pass title under a tax deed. A mistake in the name of the person to whom the property should have been assessed does not effect the validity of the tax as against the property itself.

O'Grady vs. Barnhisel, 23 Cal. 287;
Moss vs. Shear, 25 Cal. 38;
Brunn vs. Murphy, 29 Cal. 326.

The assessment was made to the defendant by name. The recital in the assessment book under the head "description of property," that "the property is assessed to parties listed and to all owners and claimants known or unknown," was an idle recital, and did not place the assessment within the principle decided in *Hearst vs. Egglestone*, 55 Cal. 365, and the other cases therein referred to.

City and County of San Francisco vs. Phelan, 61 Cal. 617.

Where the heading of the assessment roll read "assessment of property for the fiscal year ending April 1, 1871. To all owners and claimants known and unknown in Alameda Township"; held, that the recital in the heading was an idle recital, citing *San Francisco vs. Phelan*, 61 Cal. 619. But in this case, under "Taxpayers name," the assessment is to: Place, Wilson, Newman, and others." The assessment is void under *Hearst vs. Egglestone*, 55 Cal. 465; *Brady vs. Dowden*, 59 Cal. 51.

Bosworth vs. Webster, 64 Cal. 1.

IV. ASSESSMENTS. Fiduciary.

In cases provided for in section 3647 of the Political Code, the right to tax "money and property in litigation" does not depend upon the ownership thereof, nor the final result of litigation.

City of Los Angeles vs. Los Angeles City Water Works, 137 Cal. 699.

Under section 3647 of the Political Code, the court is authorized to ascertain the amount of taxes to be paid on funds and solvent credits in the hands of a receiver, and to order that the tax be paid by the receiver. Under section 3885 of the Political Code, the validity of such taxes is not affected by any informality of the original assessment.

City of Los Angeles vs. Los Angeles City Water Works, 137 Cal. 699.

An assessment which is not made as prescribed by the statute is invalid. Therefore, if the statute requires money paid into court and deposited with the

REVENUE LAWS OF CALIFORNIA.

IV. Assessments. Fiduciary. V. Assessments. Place and time.

county treasurer to be assessed to such treasurer, and it is assessed to the plaintiff in a suit, the assessment is invalid.

City of San Luis Obispo vs. Pettit, 87 Cal. 499; citing *Grotfend vs. Ultz*, 53 Cal. 666; *Grimm vs. O'Connell*, 54 Cal. 522; *Hearst vs. Egglestone*, 55 Cal. 367; *Brady vs. Dowden*, 59 Cal. 51; *Bosworth vs. Webster*, 64 Cal. 1; *Daly vs. Ah Goon*, 64 Cal. 512; *Klumpke vs. Baker*, 68 Cal. 599.

Money belonging to litigants, placed in the hands of the county treasurer by the court, is liable to taxation.

People vs. Lardner, 30 Cal. 242; citing *County of Yuba vs. Adams*, 7 Cal. 35.

Money in bank held by a title guarantee and trust company as agent or trustee for the owners and purchasers of various tracts of land whose titles it had been employed to pass upon and which is to be paid to the owners, or returned to the purchasers (with deductions of charges), according to the result of the search, should be assessed to the company, as agent or trustee for the unknown owners, or to the equitable owners, if accessible, nor is the property taxed subject to any deduction on account of debts due from the company. The failure of the assessor to designate the company's principals or beneficiaries is not sufficient to invalidate the assessment in the absence of information on his part on the subject.

Title & Guarantee and Trust Company vs. County of Los Angeles, 3 Cal. App. 619; citing *People vs. National Bank*, 123 Cal. 52; *Bode vs. Holtz*, 65 Cal. 106; *Weyse vs. Crawford*, 85 Cal. 196.

A description for assessment (of personal property) by reference to another document, held to be valid.

City of Los Angeles vs. Glassell, 4 Cal. App. 43; citing *San Francisco vs. Pennie*, 93 Cal. 465.

V. Assessments. Place and time.

The time prescribed by law for assessment is directory.

Hart vs. Plum, 14 Cal. 148.

Money at interest is to be taxed in the county in which the creditor resides. (Revenue acts of 1861-1864.)

People vs. Whartenby, 38 Cal. 461.

For the purposes of taxation, the *situs* of money belonging to the estate of a deceased person is in the county where the decedent resided at the time of his death and the *situs* is not changed by placing the money on general deposit in a bank in another county.

City and County of San Francisco vs. Lux, 64 Cal. 481.

The provisions of the Political Code and of the constitution providing for the assessment of personal property in the county in which it is situated have reference to its permanent *situs*, as distinguished from the place of temporary sojourn, or transit.

Rosasco vs. Tuolumne County, 143 Cal. 430.

Regardless of whether grazing stock were assessed under the act of 1872 or under the Political Code and constitution as personal property, they were only assessable in a county other than that of the residence of the owner when having a permanent *situs* therein. If grazing stock were permanently kept at the residence of the owner, and were temporarily grazing in another county on the

CITATIONS FROM DECISIONS OF CALIFORNIA COURTS.

V. Assessments. Place and time. VI. Assessments. List or statement.

first Monday in March, at noon, they were properly assessed at the owner's place of residence.

Rosasco vs. Tuolumne County, 143 Cal. 430.

The corporate franchise "to be" a corporation, is to be assessed at the principal place of business of the corporation, and as the principal place of business of a foreign corporation is without the state its franchise "to be a corporation" can not be assessed herein.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204. See, also, *Western Union Oil Company vs. City of Los Angeles*, 161 Cal. 718.

In the absence of any fraud on the part of the assessor in the valuation of such franchise, the assessments of which in each school district purported to be upon the franchise used in that particular district, the fact that he valued the franchise in each district according to the number of miles of transmission lines in that district, without reference to the extent of the public highways over which the lines were erected, does not render the assessments violative of section 10 of article XIII of the constitution, requiring property to be assessed in the district in which it is situated.

Kern River Company vs. County of Los Angeles, 164 Cal. 751.

Such franchise could not be assessed against the company in a school district in which no part of the public roads was used in the operation of its lines. Such an attempted assessment thereof is without the jurisdiction of the assessor to make, and can not be validated, or rendered conclusive, by the action of the county board of equalization in approving it.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; citing *Brenner vs. Los Angeles*, 160 Cal. 77.

VI. Assessments. List or statement.

It is the duty of a taxpayer to furnish a true and correct list of his taxable property to the assessor, and if he fails to do so, and any loss results to him in consequence of such failure, he is entitled to no protection from the courts.

City and County of San Francisco vs. Flood, 64 Cal. 504.

An assessor may demand of a warehouseman, who has in his possession personal property of another subject to taxation, the name of the owner and a description of the property. If this be refused, it is the duty of the assessor to note the refusal upon the assessment book, and make an estimate of the value of the property.

Bode vs. Holtz, 65 Cal. 106.

The mailing of a letter by the taxpayer to the assessor, inclosing a statement of property for taxation, does not relieve him of the neglect to furnish a statement to the assessor, where the presumption that the letter was received in due course of mail is overcome by the testimony of the assessor that the letter and statement were never received.

Grade vs. County of Mariposa, 132 Cal. 75.

The assessor has power to assess other taxable property belonging to a taxpayer who has returned a verified list or statement of his taxable property, without having first issued a subpoena and held an examination, pursuant to section 3632 of the Political Code.

Kern Valley Water Company vs. County of Kern, 137 Cal. 511; affirming *People vs. National Bank*, 123 Cal. 63; *Savings and Loan Society vs. San Francisco*, 131 Cal. 356; *San Francisco vs. La Société Française*, 131 Cal. 612.

REVENUE LAWS OF CALIFORNIA.

VI. Assessments. List or statement. VII. Assessments. Arbitrary.

The assessor has power to assess property not listed by the taxpayer which was properly assessable within the county, without serving a subpoena, and without an order of the supervisors.

Rosasco vs. County of Tuolumne, 143 Cal. 430; citing *People vs. National Bank*, 123 Cal. 53; *San Francisco vs. La Société, etc.*, 131 Cal. 612; *Security Savings Bank vs. San Francisco*, 132 Cal. 599; distinguishing *Weyse vs. Crawford*, 85 Cal. 196.

Where a taxpayer returns to the assessor a verified list of his property, although he can not be subjected to an additional assessment which shall not be revisable by the board of equalization, yet the assessor has power, notwithstanding such verified list, to assess other taxable property belonging to the same owner.

People vs. National Bank of D. O. Mills & Co., 123 Cal. 53; distinguishing *Weyse vs. Crawford*, 85 Cal. 196. See also, *Savings and Loan Society vs. City and County of San Francisco*, 131 Cal. 356; *City and County of San Francisco vs. La Société, etc.*, 131 Cal. 612; *Security Savings Bank vs. City and County of San Francisco*, 132 Cal. 599; *Kern Valley Bank vs. County of Kern*, 137 Cal. 511.

If, in an action to recover a tax brought against a railroad company, the company avers in its answer that its superintendent furnished the assessor with a written statement of the real estate belonging to the company, the company can not, on the trial, be heard to dispute the authority of its agent to give a list of its property, nor to deny that the property contained in the list belonged to the company.

People vs. Stockton, etc., Railroad Co., 49 Cal. 414.

In the absence of any request for a statement of his taxable property, a mortgagor of real property has the right to assume that the assessor, in assessing the mortgaged property for the purpose of taxation, had properly performed his official duty and had deducted the value of the recorded mortgage from the assessed value of the property.

Brenner vs. City of Los Angeles, 160 Cal. 72.

VII. Assessments. Arbitrary.

Upon neglect of a taxpayer to furnish a statement to the assessor, it is his duty, under the law, to make an arbitrary assessment, and the taxpayer who pays the tax thereon under protest can not maintain an action to recover back the taxes paid.

Grade vs. County of Mariposa, 132 Cal. 75.

An assessor can not make an arbitrary assessment, unless the property owner neglects or refuses to make any statement under oath; and if such statement is returned, no matter how false the assessor believes it to be, he has no power thereafter to make an arbitrary assessment on the ground of neglect or refusal to return property supposed to be assessable, the proper remedy being either to cite or subpoena the party for examination, or to prosecute him for perjury.

Weyse vs. Crawford, 85 Cal. 196.

An entry on the assessment book oposite the name of the party assessed that he had "neglected to return a statement as required by section 3629, Political Code," is sufficient.

Orena vs. Sherman, 61 Cal. 101.

The legislature may impose a penalty on those who neglect to have their property assessed at the proper time.

Biddle vs. Oaks, 59 Cal. 94.

CITATIONS FROM DECISIONS OF CALIFORNIA COURTS.

VIII. Assessments. Escaped property. IX. Assessments. Personal property.

VIII. Assessments. *Escaped property.*

If any property subject to taxation should escape assessment in any year, the taxation for that year would not be "equal and uniform," nor would all the property in the state be taxed in proportion to its value, and the behest of the constitution would not be obeyed. For such an infraction the legislature has provided a remedy by the enactment of section 3649 of the Political Code. All property that escapes assessment one year is liable to be assessed at double its value the next succeeding year. There is no conceivable reason why property that has escaped one year, should not, on the discovery of the fact, be compelled to pay the tax which it escaped paying.

Biddle vs. Oaks, 59 Cal. 94.

Section 3649 of the Political Code, providing for the reassessment of property which has "escaped assessment" in the preceding year, is not unconstitutional. The word "assessment" as used in said section, means a valid assessment.

City of San Luis Obispo vs. Pettit, 87 Cal. 499; citing *Biddle vs. Oaks*, 59 Cal. 94.

IX. Assessments. *Personal property.*

The rule as to the degree of certainty required in describing personal property in assessments for taxation is, that the property must be so described that taxpayers may know for what they are taxed; and when an assessment is for "mining stock," the description meets the requirements of section 3650 of the Political Code, subdivision 4, and is sufficient for all purposes.

City and County of San Francisco vs. Flood, 64 Cal. 504; citing *People vs. Holladay*, 25 Cal. 300; *People vs. McCreery*, 34 Cal. 434; *Falkner vs. Hunt*, 16 Cal. 167; *People vs. Sneath*, 28 Cal. 612. See, also, *Savings and Loan Soc. vs. San Francisco*, 131 Cal. 356.

A lumping assessment of personal property is bad. Every item of personal property need not be listed, but different classes should be named—as goods, money loaned, gold dust, solvent credits, etc.

Falkner, Bell & Co. vs. Hunt, 16 Cal. 167.

Personal property may be assessed in bulk without a statement of its character.

People vs. Sneath, 28 Cal. 612.

The rule as to degree of certainty required in describing personal property in assessments is this, that the property shall be so described that taxpayers may know for what they are taxed.

City and County of San Francisco vs. Flood, 64 Cal. 504; citing *People vs. Home Insurance Co.*, 29 Cal. 549.

Under section 3650 of the Political Code, the failure to enumerate personal property in detail does not invalidate the assessment. It is only necessary to show generally the kind or quality of personal property, so that the taxpayer may know for what property he is taxed.

Dear vs. Varnum, 80 Cal. 96; citing *San Francisco vs. Flood*, 64 Cal. 504; *Cadwalader vs. Nash*, 73 Cal. 43.

An assessment of taxes against the administrator of an estate of a decedent, upon property described as "personal property, as per inventory on file in the superior court, department No. 9, personal property, \$100,000," is a sufficient compliance with the requirements of the statute, as respects the description of the property, to form the basis of the assessment.

City and County of San Francisco vs. Pennie, 93 Cal. 465. See, also, *City of Los Angeles vs. Glassell*, 4 Cal. App. 43.

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IX. Assessments. Personal property.

The word "enumerate," as used in subdivision 4 of section 3650 of the Political Code, which provides for the assessment of "personal property, showing the number, kind, amount, and quality," but that "a failure to *enumerate* in detail such personal property does not invalidate the assessment," does not mean merely to "number," but imports to "designate," or "specifically mention," and applies to each of the specifications previously named in the clause. The legislature evidently intended that the assessment should not be invalidated if neither the number, kind, nor quality of the personal property should be specifically mentioned.

City and County of San Francisco vs. Pennie, 93 Cal. 465; citing *San Francisco vs. Flood*, 64 Cal. 504; *People vs. Sneath*, 28 Cal. 612. See, also, *City of Los Angeles vs. Glassell*, 4 Cal. App. 43.

A description for assessment of personal property by reference to another document is valid.

City of Los Angeles vs. Glassell, 4 Cal. App. 43; citing *San Francisco vs. Pennie*, 93 Cal. 465.

An assessment of personal property by an assessor entered in the assessment book as follows: "Value personal property, exclusive of money and solvent credits, \$15,725," is sufficient, under section 3650 of the Political Code, although the person assessed gave to the assessor a list of the property in detail.

Dear vs. Weinke, 94 Cal. 322; citing *San Francisco vs. Pennie*, 93 Cal. 465.

Under section 3650 of the Political Code, an assessment of personal property which does not show the number, kind, amount, and quality, is not invalid, yet the statute contemplates such a showing.

Savings and Loan Society vs. City and County of San Francisco, 146 Cal. 673; citing *San Francisco vs. Pennie*, 93 Cal. 465; *Dear vs. Weinke*, 94 Cal. 322; *San Francisco vs. Flood*, 64 Cal. 504; *People vs. McCreery*, 34 Cal. 432.

The description of property additionally assessed by the assessor to a savings bank as "loans on stocks and bonds," is sufficiently certain to enable the savings bank to know for what property they are taxed, and sufficiently imports money loaned by the bank on the security of stocks and bonds, which is properly taxed to the bank as the lender.

Savings and Loan Society vs. City and County of San Francisco, 131 Cal. 356; citing *San Francisco vs. Flood*, 64 Cal. 504; *People vs. McCreery*, 34 Cal. 432. See, also, *San Francisco vs. La Société, etc.*, 131 Cal. 612; *Security Savings Bank vs. San Francisco*, 132 Cal. 599.

Personal property is to be assessed and taxed in the county in which it is situated, except money and gold dust, which may, at the option of the owner, be taxed in the county in which he resides.

People vs. Niles, 35 Cal. 282.

NOTE.—Decision is under one of the old revenue acts, prior to the codes.

To authorize the taxing of personal property in any other county than that in which the owner resides, it must appear that such property is kept or maintained in such county, and not there occasionally, or *in transitu*, or temporarily, in the ordinary course of business or commerce.

People vs. Niles, 35 Cal. 282. See, also, *City of Oakland vs. Whipple*, 39 Cal. 112.

Personal property transiently within a county can not be there taxed, but should be taxed in the county in which the owner resides.

City of Oakland vs. Whipple, 39 Cal. 112; citing *People vs. Niles*, 35 Cal. 282.

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X. Assessments. Possessory rights, etc.

X. Assessments. *Possessory rights, and claims to lands.*

It has always been the law in this state that possession is *prima facie* evidence of ownership.

Bond vs. Aickley, 168 Cal. 161.

Under section 1006 of the Civil Code, a possessory right to state lands may be acquired which will be sufficient against all except the sovereignty. But this right must be evidenced by actual possession, for there can be no constructive possession in such a case.

Robinson vs. Bledsoe, 23 Cal. App. 687.

Possessory interests in public lands for mining, agricultural, or other purposes, constitute a species of property taxable under our laws.

State vs. Moore, 12 Cal. 56;

People vs. Morrison, 22 Cal. 73;

People vs. Shearer, 30 Cal. 645;

People vs. Frisbie, 31 Cal. 146;

People vs. Cohen, 31 Cal. 210;

People vs. Black Dia. Coal Mining Co., 37 Cal. 54;

Riley vs. Lancaster, 39 Cal. 354;

People vs. Donnelly, 58 Cal. 144;

Russ and Sons Co. vs. Crichton, 117 Cal. 695;

Bakersfield and Fresno Oil Co. vs. Jameson, 144 Cal. 148.

The term "claim to" * * * any land, means not only an assertion of title but an actual possession of the land claimed, and such claim or right of possession is property liable to taxation.

People vs. Frisbie, 31 Cal. 146; citing *People vs. Shearer*, 30 Cal. 645.

The equitable title to lands sold by the state, for which certificates of purchase have been issued, is subject to taxation, and when such lands are afterwards sold to the state for delinquent taxes, the equitable title reverts in the state, subject to redemption as provided by statute.

Russ and Sons Co. vs. Crichton, 117 Cal. 695.

The definition in the constitution and statutes of property subject to taxation is broad enough to include the possessory right and imperfect interest acquired by a purchaser from the state, prior to payment of the purchase money or patent; and the state is not estopped from assessing the same.

People vs. Donnelly, 58 Cal. 144.

In order to hold improvements upon public lands liable for taxation, the assessment must be upon the improvements *eo nomine*, and not upon the land itself.

People vs. Morrison, 22 Cal. 73.

The interest of the occupant of a mining claim is property, and, under the constitution, it is in the power of the legislature to tax such property.

State vs. Moore, 12 Cal. 56;

People vs. Shearer, 30 Cal. 645.

The term "property in lands" is not confined to title in fee, but is sufficiently comprehensive to include an usufructuary interest, whether it be a leasehold or mere right of possession. Several persons may have, in the same land, a property which is subject to taxation; and it is not perceived that the fact that the property of the government is exempt from taxation affects the right to tax the interest which private individuals have acquired in the same property. Exemption from taxation is a privilege of the government, not an incident to the property.

State vs. Moore, 12 Cal. 56.

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X. Assessments. Possessory rights, etc.

The possessory right to a mining claim is properly assessed as real estate under section 3617 of the Political Code; and under section 3820 of the same code, such assessment is immediately due and payable, and it is the duty of the possessor to pay the same upon demand of the assessor.

Bakersfield and Fresno Oil Co. vs. Jameson, 144 Cal. 148.

Lands of the United States for which final payment has been made and final receipt issued are taxable, although the patent may not have issued. Improvements on the public domain are taxable whether the land is owned or not.

People vs. Shearer, 30 Cal. 645; citing *State vs. Moore*, 12 Cal. 356.

The interest in a mining claim is property, and may be sold under execution.

McKeon vs. Bisbee, 9 Cal. 137.

State vs. Moore, 12 Cal. 56.

The state can acquire no title to lieu land until the land is selected, and the selection approved by the United States land department, and the land is listed to the state.

Allen vs. Pedro, 136 Cal. 1.

In the assessment of oil mining rights, the right of the lessee to take such oil stratum from its place and convert it to his own use is a "claim to" land within the meaning of subdivision 1 of section 3617 of the Political Code, providing that a "claim to" land is real estate subject to taxation, and is also a "right and privilege appertaining to" minerals, within the meaning of subdivision 2 of said section, and taxable as such.

Graciosa Oil Company vs. County of Santa Barbara, 155 Cal. 140; distinguishing *Bakersfield, etc., Oil Co. vs. Kern County*, 144 Cal. 154.

Subdivision 2 section 3617 of the Political Code, providing that for purposes of taxation real estate shall include "all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto," is applicable to mines, minerals, quarries, and timber, and rights and privileges appertaining thereto, in and on lands held in private ownership, as well as on lands owned by the United States.

Graciosa Oil Company vs. County of Santa Barbara, 155 Cal. 140.

Wells, pumping machinery and pipe lines on water-bearing lands, together with such lands, constitute "real estate" within the definition of that term as used in the revenue act, which includes "the possession of claimants, ownership of or right to the possession of land," and all of such property should be assessed and taxed as real estate.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

Under section 2275 of the United States revised statutes, as amended by the act of Congress of February 28, 1891, neither the State of California nor its transferee acquired any vested right in land selected by it as indemnity for losses sustained to its grant of public land for common schools, until the selection was formally approved for listing by the secretary of the interior; and if, prior to such approval, the land selected by the state as agricultural land be found to be mineral land, the secretary of the interior, under the act of congress of July 25, 1910, has no authority to approve the selection.

Buena Vista Land and Development Company vs. Honolulu Oil Company, 166 Cal. 71.

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X. Assessments. Possessory rights, etc. XI. Assessments. Valuation.

A leasehold interest in submerged lands which belong to the state can not be taxed to the lessee.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425.

Where land is leased, the owner of the fee may fairly be deemed to be the owner of the whole estate for purposes of taxation.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425.

Land held under an ordinary lease for years, giving the right to hold the property for usufructuary purposes only, is subject to but one assessment of the entire estate in the land against the owner of the fee. The assessment should not include the value of both of the estates for years and the remainder or reversion.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425; distinguishing *People vs. Shearer*, 30 Cal. 645; *People vs. Frisbie*, 31 Cal. 146; *People vs. Black Diamond Coal Co.*, 37 Cal. 54; *Los Angeles vs. Los Angeles Water Works*, 49 Cal. 638; *San Francisco vs. McGinn*, 67 Cal. 110; *Bakersfield Oil Company vs. Kern County*, 144 Cal. 148; *Graciosa Oil Company vs. Santa Barbara*, 155 Cal. 140.

XI. Assessments. Valuation.

The listing and valuation of real estate, for the purpose of taxation, is an essential prerequisite to the validity of all subsequent proceedings. The assessment must be made by the assessor. If no valuation was placed by the assessor upon the property, none can be placed upon it by the board of equalization. The board may alter the valuation, in order to equalize it, but can not place the value in the first instance.

Ferris vs. Coover, 10 Cal. 589;

Kelsey vs. Abbott, 13 Cal. 609.

A valuation by the assessor is essential to the validity of the tax, and neither the legislature nor the auditor can make the valuation if the assessment is defective in this particular.

People vs. San Francisco Savings Union, 31 Cal. 132; citing *People vs. Hastings*, 29 Cal. 449.

The foundation of proceedings for apportioning and collecting a tax upon property is the valuation, which, under the rule of the constitution, must be made by the assessor, and the legislature can not supply this defect, if it existed, by any curative act.

People vs. McCreery, 34 Cal. 432.

An assessor is required to exercise his best judgment in determining as to the value of property to be assessed, and the presumption is that his official duty has been regularly performed.

Ballerino vs. Mason, 83 Cal. 447.

Where there is nothing on the original assessment roll to show what valuation was put upon the land and improvements attempted to be assessed, the assessment is invalid, and a tax deed based thereon is void.

Emeric vs. Alvarado, 90 Cal. 444.

A tax to be valid, must rest upon an assessment made by the assessor.

Riley vs. Lancaster, 39 Cal. 354; citing *People vs. Hastings*, 29 Cal. 499; *People vs. Placerville, etc., Railroad Co.*, 34 Cal. 656.

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XI. ASSESSMENTS. VALUATION.

An assessment is void if there be no valuation.

Garwood vs. Hastings, 38 Cal. 216; citing *People vs. San Francisco Savings Union*, 31 Cal. 132.

A valuation, if rightly fixed by the assessor, the assessment is valid, though that value was arrived at in a different way from the statutory provisions.

Hart vs. Plum, 14 Cal. 148.

The legislature can not, by law, fix the assessed value of property.

People vs. Hastings, 29 Cal. 449;

People vs. S. F. Savings Union, 31 Cal. 132.

An assessment of property at less than its actual value, if made with the purpose of enabling the one assessed to evade taxation, is not a refusal or neglect to perform official duty, but a "wilful and corrupt misconduct in office," for which the assessor might be accused by the grand jury under section 758 of the Penal Code; but if made in the ordinary exercise of his official duty, without any corrupt or illegal motive, is of a judicial nature, for which he is not amenable to the penal laws of the state.

Siebe vs. Superior Court, 114 Cal. 551; citing *Clunie vs. Siebe*, 112 Cal. 593.

A public officer is not liable to an action if he falls in error, in a case where the act done is not merely a ministerial one, but is one in relation to which it is his duty to exercise judgment and discretion, even though an individual may suffer by his mistake.

Ballerino vs. Mason, 83 Cal. 447.

In the absence of fraud on the part of the assessor, his method of arriving at the valuation of property is a matter committed entirely to his determination.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; citing *San Jose Gas Company vs. January*, 57 Cal. 614; *Los Angeles vs. Western Union Oil Company*, 161 Cal. 206. Distinguishing *Los Angeles Gas and Electric Company vs. County of Los Angeles*, 162 Cal. 165.

An excessive valuation is not by itself alone evidence of fraud, and any inference or presumption of fraud arising from merely excessive valuation is repelled by proof that the valuation was arrived at by a proper method.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204; distinguishing *Postal Telegraph Cable Company vs. Dalton*, 119 Cal. 604.

The market value of the stock of a corporation on a given day is synonymous with "value" and "full cash value" defined by section 3617 of the Political Code, and in the absence of exceptional or extraordinary conditions giving an abnormal value to the stock on the first Monday in March, the assessor may take its market value on that day as representative of its then full cash value.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204; citing *Crocker vs. Scott*, 149 Cal. 575.

A domestic corporation whose franchise "to be" a corporation has been assessed by taking the market value of its stock as such value was shown on the first Monday in March under normal conditions, is not relieved from the payment of the tax levied thereon from the fact that the franchises of other like corporations escaped like assessments, nor is such a tax discriminatory against domestic corporations in that it is not levied against the franchises of foreign corporations.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204. See, also, *Western Union Oil Company vs. City of Los Angeles*, 161 Cal. 718.

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Mandamus will not lie to compel the assessor to assess property in excess of its value, upon the ground that it was greatly undervalued for the previous fiscal year.

Clunie vs. Siebe, 112 Cal. 593.

The taxpayer is required to furnish the assessor a complete list of his property, but he is not required to affix any valuation to any part of his property, but it is the duty of the assessor to fix the valuation, and any error in undervaluation is to be corrected by the board of equalization; and any misrepresentation by the owner as to the value of his property is immaterial if there is no misrepresentation as to the property itself.

Clunie vs. Siebe, 112 Cal. 593.

The assessment of property for the purpose of taxation is a function of the executive department of the government; and the judiciary has no power or jurisdiction to inquire as to the actual value of property for the purpose of taxation, in order to determine whether there has been a misrepresentation of its value.

Clunie vs. Siebe, 112 Cal. 593.

When several parcels of land are assessed to the same person, they must be separately valued, and the value of each parcel must be placed in the column under "value of land." It is not sufficient to place the valuation of each parcel in the column under "description of property," and the total valuation in the column under "value of land."

People vs. Hollister, 47 Cal. 408; citing *People vs. Sierra Buttes, etc.*, 39 Cal. 511.

Where a board of trustees of a city has duly elected, under the terms of the act of March 27, 1895, to make use of the county officers in the matter of the levy and collection of taxes for city purposes, property computed upon the assessed valuation of the city property, as equalized by the board of supervisors, the city taxes so equalized can not be affected by a subsequent change in the assessed value of such property for state and county purposes, by the state board of equalization.

Madary vs. City of Fresno, 20 Cal. App. 91; distinguishing *Baldwin vs. Ellis*, 68 Cal. 495.

It is not the intent and purpose of the act of 1895, to merge and confound city and county business, by reason of the election of the board of trustees thereunder, to use the county officers in assessing and collecting city taxes. In discharging the duties of city assessor, city tax collector, and city treasurer, the respective county officers become or are *ex officio* officers of the city.

Madary vs. City of Fresno, 20 Cal. App. 91.

In fixing the valuation of the gas mains, it was entirely competent for the assessor to take into consideration the cost, as estimated by himself, of digging the trenches, laying the pipes, and making the connections. It was competent for him to determine that mains laid in the ground were of more value, as so laid, than would be the pipes in the warehouse of the dealer, or than would be the crude iron at the foundry.

San Jose Gas Company vs. January, 57 Cal. 614.

If an assessor errs in his judgment in determining the value of property, the remedy is by application to the board of equalization, and courts will not revise the judgment of assessors upon such question.

San Jose Gas Company vs. January, 57 Cal. 614.

The assessment of property for taxation is not admissible in evidence as evidence of its value in condemnation proceedings. The signing of an assessment list by

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the defendant, with a valuation attached to the property, is not a declaration by him as to the value of the land.

San Jose, etc., Railroad Co. vs. Mayne, 83 Cal. 566.

An assessment of personal property and improvements on real estate, assessed to a person other than the owner of the real estate, which does not separately value and set down in separate columns the values of the different parcels and descriptions of property, is not in compliance with the revenue laws, and therefore invalid.

People vs. Sierra Buttes Q. M. Co., 39 Cal. 511.

The standard of value is the amount of money which can be realized from a sale of the property.

State vs. Moore, 12 Cal. 56.

NOTE.—Decision is prior to enactment of section 3617, Political Code.

The conclusion of assessing officers as to the value of property for purposes of taxation, when honestly arrived at and when not made in pursuance of some fixed rule or general system the result of which is necessarily discriminatory and inequitable, is conclusive on the courts, however erroneous the conclusions of those officers may be.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *San Jose Gas Company vs. January*, 57 Cal. 614; *Henne vs. County of Los Angeles*, 129 Cal. 297.

A taxpayer may collaterally assail an assessment in the courts where it was fraudulently and corruptly made with the intention of discriminating against him, and for the purpose of causing him to pay more than his share of the public tax, and it has that effect, or where there is something equivalent to fraud in the making of the assessment, producing such effect. This is as true where the injurious effect so produced is caused by inequality of valuation as by any other cause.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *County of Los Angeles vs. Ballerino*, 99 Cal. 593; *Postal Telegraph Cable Company vs. Dalton*, 119 Cal. 604.

Although the evidence may warrant the conclusion of something equivalent to fraud by the assessor in the matter of the assessed valuation of property, still to enable the owner to recover the tax paid on the alleged excess valuation it must appear that the county board of equalization in some manner participated in the fraud when the matter came before it on application for reduction.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

In discharging its duties of equalization a board exercises judicial functions, and its decision as to the value of the property and the fairness of the assessment so far as amount is concerned constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question, which abrogates and takes the place of the judgment of the assessor upon that question.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

Where the only alleged effect of the fraud of the assessor is the excessive valuation of the property of the taxpayer for assessment purposes, the conclusion of the board of equalization that the fair value for such purposes is the amount fixed by the assessor renders the fraud of that officer immaterial, for it is in no way injurious. According to such conclusion of the board, the property is assessed at the same value proportionately as all the other property in the county.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

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XI. Assessments. Valuation. XII. Assessments. Description.

Unless that determination can be avoided, it is conclusive on the question of fairness of the valuation, and hence on the question of injury. It can not be avoided unless the board has proceeded arbitrarily and in wilful disregard of the law intended for their guidance and control, with the evident purpose of imposing unequal burdens upon certain of the taxpayers, or unless there be something equivalent to fraud in the action of the board. Mere errors in honest judgment as to the value of the property will not obviate the binding effect of its conclusion.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *La Grange, etc., Mining Company vs. Carter*, 142 Cal. 565; *California Domestic Water Company vs. Los Angeles*, 10 Cal. App. 185; distinguishing *County of Los Angeles vs. Ballerino*, 99 Cal. 593; *Postal Company vs. Dalton*, 119 Cal. 604; *Columbia Savings Bank vs. Los Angeles County*, 137 Cal. 467.

XII. Assessments. Description.

The listing of land for assessment necessarily means that the name of the owner, if known, and a description of the property assessed must be "correctly stated."

Bruschi vs. Cooper, 30 Cal. App. 682.

An assessment must sufficiently designate the property taxed.

People vs. Pico, 20 Cal. 595.

The description must be certain in itself and not such as to require evidence *aliunde* to make it certain.

Kean vs. Cannovan, 21 Cal. 291.

An assessment of a tract of land "by name" was sufficient, under the revenue act of 1861.

People vs. Leet, 23 Cal. 161; citing *Castro vs. Gill*, 5 Cal. 42; *Yount vs. Howell*, 14 Cal. 467.

An assessment is not void because a false call has been inserted in the description, unless the owner is misled thereby.

Bosworth vs. Danzien, 25 Cal. 296. See, also, *Palomares Land Company vs. Los Angeles County*, 146 Cal. 530.

If the assessor, in assessing a lot, arbitrarily divides the same, and assesses one part to the owner and the other part to unknown owners, the latter assessment is illegal and void.

Biddleman vs. Brooks, 28 Cal. 72.

An assessment is void which simply describes the land assessed by giving its name and metes and bounds, less certain lots sold out of the same, without giving the location and boundaries of the lots sold.

People vs. Mariposa County, 31 Cal. 196; citing *People vs. Pico*, 20 Cal. 595.

An assessment which described the property, less a certain described moiety, is not void for sufficiency of description.

Wetherbee vs. Dunn, 32 Cal. 106; citing *People vs. Holladay*, 25 Cal. 300.

If the assessor, in assessing a tract of land which consists of a specified quantity granted by the Mexican government, to be selected within the exterior boundaries of a much larger tract, describes it as definitely as the nature of the case will admit, the assessment is valid.

People vs. Crockett, 33 Cal. 150.

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A description which is so vague, indefinite and uncertain as to render it impossible to determine whether the whole or a part, or if a part, what part was to be assessed, is insufficient.

People vs. Flint, 39 Cal. 670; citing *People vs. Pico*, 20 Cal. 596; *People vs. Mariposa County*, 31 Cal. 198.

In an action to quiet title, a description in the complaint of the property in question as being "that real property situated in the city and county of San Francisco and in the counties of San Mateo and Santa Cruz and more particularly described as follows, to wit: Rights of way, terminal lands, and all the property known as the 'Ocean Shore Railway Property,' more particularly described in the public records of said city and county of San Francisco in Liber 62 of mortgages, page 29, *et seq.*, and to which reference is hereby made for said description," is insufficient.

Aalwyn's Law Institute vs. Martin, 173 Cal. 21.

An assessor may assess and place a valuation on a block in a city, as a whole, when one man owns it, without placing a separate valuation on the several lots into which it is divided.

People vs. Morse, 43 Cal. 534.

People vs. Culverwell, 44 Cal. 620.

NOTE.—These decisions are under the revenue act of 1861. But the provisions of that act, relative to description, closely follow our present section 3650 of the Political Code.

A deed made under a sale for a tax, in pursuance of a judgment enforcing the lien of the tax, is not void because the property sold, being several lots in a city, was assessed *in solido*, and not each lot separately.

Anderson vs. Rider, 46 Cal. 134; affirming *Mayo vs. Foley*, 40 Cal. 282.

NOTE.—Decision involves an assessment for year 1867—prior to enactment of section 3650 of the Political Code.

An assessment of a large tract of land for taxes, which describes the whole tract by metes and bounds, and then excepts from the tract parcels of the same which had previously been conveyed, but does not describe the excepted portions by metes and bounds, nor in any manner, except by reference to recorded deeds, is void on its face.

People vs. Cone, 48 Cal. 427; citing *People vs. Pico*, 20 Cal. 595; *People vs. Mariposa County*, 31 Cal. 196. See, also, *People vs. Hyde*, 48 Cal. 431.

An assessment for a tax in which 15,080 acres of land are assessed by quantity and boundaries, excepting therefrom a portion thereof before sold, without a description of the excepted portion, is void.

People vs. Hyde, 48 Cal. 431; citing *People vs. Cone*, 48 Cal. 427.

Where the assessor assesses an entire tract of land to a person, and the person assessed had previously sold a part of the same by metes and bounds, and the assessment contains nothing to show what valuation the assessor placed on the part not sold, the assessment is fraudulent and void, and the tax can not be collected.

People vs. Hancock, 48 Cal. 631.

When the description of the property assessed is taken from a list furnished by the taxpayer, or when made by the assessor without the aid of such list, the taxpayer can not be heard to complain of the insufficiency of the description.

City and County of San Francisco vs. Flood, 64 Cal. 504.

Under sections 3650 and 3628 of the Political Code, it is sufficient in an assessment of a tract of land, to describe it by stating the congressional subdivisions contained in it.

Lake County vs. Sulphur Bank Q. M. Co., 63 Cal. 17. See, also, *Lake County vs. Sulphur Bank Q. M. Co.*, 68 Cal. 14.

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XII. Assessments. Description.

Riparian rights, being rights and privileges appertaining to the riparian land, section 3617 of the Political Code contemplates their inclusion in the assessment of the land, and it must be assumed, nothing appearing to the contrary, that the assessor has pursued this course; if he does not thus intend to include the value of the riparian rights, in assessing the land, it should so appear in his assessment.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278.

A description in an assessment of riparian rights: "In Washington township, said county: riparian rights. The right to take, divert, and use water from Alameda Creek and its tributaries," is insufficient to impart validity to the tax under section 3650 of the Political Code.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278.

Under section 3650 of the Political Code, town lots must be separately listed and valued for purposes of assessment, according to the system of numbering obtaining in such towns; and an assessment of several lots as one undivided parcel is void, if the owner thereof did not return them to the assessor as a whole, and did not refuse to make a return.

Cadwalader vs. Nash, 73 Cal. 43; distinguishing *People vs. Morse*, 43 Cal. 541; *People vs. Culverwell*, 44 Cal. 620.

If the description of the property assessed is certain enough to inform the taxpayer for what he is assessed, it is sufficiently certain.

City and County of San Francisco vs. Pennie, 93 Cal. 465; citing *San Francisco vs. Flood*, 64 Cal. 504; *People vs. Home Ins. Co.*, 29 Cal. 549; *People vs. McCreery*, 39 Cal. 441. See, also, *City of Los Angeles vs. Glassell*, 4 Cal. App. 43.

NOTE.—The above action involved an assessment of personal property, not real estate.

Where the whole of a ranch is assessed, the quantity of land expressed in acres is mere description, and does not control the more certain description by boundaries, but must yield to boundaries where they do not agree.

Baldwin vs. Temple, 101 Cal. 396; citing *Stanley vs. Green*, 12 Cal. 164; *De Arguello vs. Greer*, 26 Cal. 632; *Tappendorff vs. Downing*, 76 Cal. 170.

Where the land sold for taxes consists of five adjoining lots, all belonging to the same owner, upon which a livery stable is located which extends over and upon each of the lots, the entire five lots are to be considered as but one single parcel of land, for the purpose of taxation, and an assessment of them as such is valid, and the sale and deed for delinquent taxes regularly based thereon, confers a title.

Cooper vs. Miller, 113 Cal. 238; citing *People vs. Morse*, 43 Cal. 534; distinguishing *Terrill vs. Groves*, 18 Cal. 149.

A description upon the assessment roll of a town lot, the depth of which can not be determined from any data given therein, is fatally defective and renders the assessment void; nor can any presumption of fact be indulged that the lot extends in depth to the center of the block; nor is parol evidence admissible to ascertain what particular lot, or depth of lot, the assessor had in mind.

Harvey vs. Meyer, 117 Cal. 60.

The law imputes knowledge of facts to one who has sufficient knowledge to put him upon inquiry, and an assessment of taxes is notice to the owner of the description of property therein contained.

San Diego Land and Town Co. vs. La Presa School Dist., 122 Cal. 98.

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If the description in an assessment is so ambiguous that a mistake might reasonably be made in a voluntary payment of the tax, the court will not relieve against such mistake.

San Diego Land and Town Co. vs. La Presa School Dist., 122 Cal. 98; citing *Brumagim vs. Tillinghast*, 18 Cal. 265; *Maxwell vs. San Luis Obispo*, 71 Cal. 466; *Cooper vs. Chamberlain*, 78 Cal. 450.

An assessment of land for the purpose of taxation which so designates the land that it would afford the owner a means of identification, and would not positively mislead him or would not be calculated to do so, the description is sufficient so that the return of the land for assessment and the payment of taxes thereon is admissible in evidence.

Lummer vs. Unruh, 25 Cal. App. 97; citing *Best vs. Wohlford*, 144 Cal. 736; *San Francisco vs. Pennie*, 93 Cal. 465; *San Francisco vs. Flood*, 64 Cal. 504.

A clerical mistake in the description of a tract and, in giving a wrong number to a section, does not vitiate the assessment (reclamation), where the entire description is such that the mistake is obvious upon a mere inspection of the map or diagram of the tract, and the identification of the land is apparent from the other calls, and a surveyor would have no difficulty in ascertaining the precise land intended.

Lower Kings River Reclam. Dist. vs. McCullah, 124 Cal. 175; citing *Reamer vs. Nesmith*, 34 Cal. 624; *Irring vs. Cunningham*, 66 Cal. 15; *Helm vs. Wilson*, 76 Cal. 476.

It is contended that the rule applicable to the description of a deed will not hold as to an assessment. We see no reason for such a distinction; the main point is to have the land described so that its identity can be ascertained.

Lower River Reclam. Dist. vs. McCullah, 124 Cal. 175.

Where the description of the boundary lines of an assessment district, as contained in the ordinance of intention, after a course has been traced to a point on the westerly line of Grand avenue, proceeds "thence easterly in a direct line to the most westerly corner of lot 10 of Feldhauser's subdivision of blocks 85 and 86, Ord's survey, as per map," etc., and it appears from such map that there are two lots number 10 in the subdivision in question, both located in an easterly direction from the point on Grand avenue referred to, the assessment is void because of the indefiniteness and uncertainty of the description, although both of such lots lie in an easterly direction from the point on Grand avenue.

Walker vs. City of Los Angeles, 23 Cal. App. 634.

An assessment of a beach block of land in San Francisco, made by metes and bounds, is not invalidated by failure to specify the lots included therein by number, or to specify the number of the block, inasmuch as it appears that no system of numbering the lots and blocks had been adopted or was in existence in San Francisco.

Davis vs. Pacific Improvement Co., 137 Cal. 245. See, also, *Davis vs. Pacific Improvement Co.*, 7 Cal. App. 452.

The object of section 3650 of the Political Code, providing for giving the number of a city lot and block according to the system of numbering in such city and town, is to obviate the necessity of describing each lot by metes and bounds. An assessment of a lot by metes and bounds is not invalidated by reason of the fact that it would be as fully identified by a description number of the lot and block.

Davis vs. Pacific Improvement Co., 137 Cal. 245. See, also, *Davis vs. Pacific Improvement Co.*, 7 Cal. App. 452.

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The provisions of the statute that the description is to be "sufficient to identify it" implies that evidence may be received for the purpose of showing the sufficiency of the identification, and any competent evidence which is relevant to that issue should be received by the court. Whether the description of the land is sufficient to identify it is a question of fact, to be determined by the evidence presented on that issue.

Best vs. Wohlford, 144 Cal. 733. See, also, *Best vs. Wohlford*, 153 Cal. 17.

NOTE.—This decision perhaps overrules *People vs. Mahoney*, 55 Cal. 286, as to evidence *aliunde*. See, also, in this connection, *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530, 537.

An assessment of land by false metes and bounds, and containing no other description sufficient to identify it, is wholly void, and no penalties are required to be paid thereon for purpose of redemption.

Palomares Land Co. vs. County of Los Angeles, 146 Cal. 530; citing *Harvey vs. Meyer*, 117 Cal. 60; *Miller vs. Williams*, 135 Cal. 184; *Best vs. Wohlford*, 144 Cal. 737. See, also, *Couts vs. Cornell*, 147 Cal. 560.

Where the description in an assessment (of personal property) is clear and unambiguous as to the property to be assessed, it can not be shown by extrinsic evidence that it was intended to include other property. The assessment roll, when completed and certified to the board of supervisors, is the only evidence of the acts and intentions of the assessor.

Savings and Loan Society vs. City and County of San Francisco, 146 Cal. 673; citing *People vs. San Francisco Savings Union*, 31 Cal. 132; *People vs. Stockton, etc., Railroad Co.*, 49 Cal. 414; *People vs. Hastings*, 34 Cal. 571; *Allen vs. McKay Co.*, 139 Cal. 94.

The fact that the assessment is imperfect as to the description does not destroy the moral obligation to pay the tax. The moral obligation to pay the amount justly chargeable as taxes is as great where the defect arises from an imperfect description of property as where it is caused by a valuation fraudulently made excessive, or by a higher levy than the board had power to make, or by a levy improperly made, or a street assessment upon an illegally enhanced value.

Couts vs. Cornell, 147 Cal. 560; citing *Pacific P. I. Co. vs. Dalton*, 119 Cal. 606; *County of Los Angeles vs. Ballerino*, 99 Cal. 597; *Quint vs. Hoffman*, 103 Cal. 508; *Esterbrook vs. O'Brien*, 98 Cal. 674. See, also, *Grant vs. Cornell*, 147 Cal. 565.

The description of property assessed as being "in Los Angeles County, in Pellissier Tr., lot 5 in block K," is sufficient for assessment purposes. The court might resume in the absence of proof to the contrary that there was but one such tract in the county, and that the tract and the extent of its boundaries are well known by that name.

Baird vs. Monroe, 150 Cal. 560; distinguishing *Miller vs. Williams*, 135 Cal. 183. See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308. See, also, *McLauchlan vs. Bonyngue*, 15 Cal. App. 239.

The naming of the city or town wherein the property assessed is situated is absolutely essential to the validity of the assessment only when the special mode of assessment prescribed by subdivision 3 of section 3650 of the Political Code is followed, viz: where only the number of lot and block, according to the system of numbering in the town, is given.

Baird vs. Monroe, 150 Cal. 560. See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

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It is not essential that the property situated in a city or town, even though it be a city or town lot, should be listed in accordance with subdivision 3 of section 3650 of the Political Code. By subdivision 2 of the same section it is provided that land must be listed "by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it"; and any land, wherever situated, may be listed under this provision. The object of subdivision 3 of section 3650 was to obviate the necessity of describing each lot by metes and bounds or other description sufficient to identify it, and to render an assessment made in accord therewith equivalent to an assessment under subdivision 2; but the assessing officer is still at liberty to assess under subdivision 2, if he so desires.

Baird vs. Monroe, 150 Cal. 560; citing *Davis vs. Pacific Imp. Co.*, 137 Cal. 245. See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

A description of land in an assessment, as follows: "In the county of San Diego, State of California, ——lot 1, block 17, Ocean Beach," is insufficient, and renders the assessment void (citing *Labs vs. Cooper*, 107 Cal. 656; *Miller vs. Williams*, 135 Cal. 183); and an injunction will lie to restrain the county officers from executing a deed to the state for unpaid taxes based upon such assessment, by a description legally sufficient to charge the property, as such deed, with the presumptions that it carries with it of the *prima facie* regularity of antecedent proceedings, would cast a cloud upon the title to the property, and result in injury to the owner.

San Diego Realty Co. vs. Cornell, 150 Cal. 637; *McLauchlan vs. Bonyng*, 15 Cal. App. 239.

Under subdivision 3 of section 3650 of the Political Code, an assessment of land, as follows:

In Los Angeles County		In Jefferson St.	
City or Town Lots.			
Lot	Block		
5	3		
6	3"		

which entirely fails to designate the city or town, and which is unaided by reference to any map, plat, or tract, is void, and all subsequent proceedings, and the deed made thereunder, are likewise void.

Wright vs. Fox, 150 Cal. 680; affirming *Labs vs. Cooper*, 107, Cal. 656; *Miller vs. Williams*, 135 Cal. 183; *Grotefend vs. Ultz*, 53 Cal. 666; *Greenwood vs. Adams*, 80 Cal. 74; *Dranga vs. Rowe*, 127 Cal. 506; distinguishing *Baird vs. Monroe*, 150 Cal. 560. See, also, *McLauchlan vs. Bonyng*, 15 Cal. App. 239.

A description of land in a tax deed as property "situate, lying and being within the county of Los Angeles, State of California, and described thus: In Los Angeles County, Glendale, lot 22, blk. 4," is in apparent accord with the requirements of subdivision 3 of section 3650 of the Political Code, that city or town lots shall be described on the assessment roll by the number of the lot and block, according to the system of numbering in such city or town. Such description implies that there was in such town a general system of numbering the blocks and lots of the town, and that it was according to such system. The description will be held *prima facie* sufficient for identification, at least when accompanied by the evidence of a witness who testified to the value and size of the lot described.

Furrey vs. Lantz, 162 Cal. 397; citing *Best vs. Wohlford*, 144 Cal. 733; distinguishing *Miller vs. Williams*, 135 Cal. 183; *For vs. Townsend*, 152 Cal. 51; *Chapman vs. Zoberlein*, 152 Cal. 216.

It has been held repeatedly and with practical unanimity that an oral agreement fixing a dividing line between owners of land is not within the statute of

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frauds, and that when the line is in doubt or dispute a settlement between the owners determines the location of the existing estate of each, and when followed by possession and occupancy, binds them in equity and at law as well.

Bree vs. Wheeler, 4 Cal. App. 109; citing *White vs. Spreckels*, 75 Cal. 610; *Helm vs. Wilson*, 76 Cal. 485; *Cavanaugh vs. Jackson*, 91 Cal. 582; *Dierssen vs. Nelson*, 138 Cal. 398; See, also, *Bree vs. Wheeler*, 129 Cal. 146.

The description must be definite, certain and intelligible of itself, and not such as to require evidence *aliunde* to render it certain. A description of the land as "a strip of 50 acres on the north line of fractional NW $\frac{1}{4}$ of section 7," etc., not calling for a strip along the whole length of that line, is too uncertain to support a tax title.

Commercial National Bank vs. Schlitz, 6 Cal. App. 174; citing *Keane vs. Cannovan*, 21 Cal. 302; *People vs. Mahoney*, 55 Cal. 286; *People vs. C. P. R. R. Co.*, 83 Cal. 400.

A description sufficiently certain to convey land between man and man, and which, if contained in an agreement to convey, would authorize a court of equity to decree specific execution, will not answer in the proceedings to enforce the collection of a tax.

Commercial National Bank vs. Schlitz, 6 Cal. App. 174.

The description of the land to be conveyed is one of the most essential parts of an agreement to sell. Such a contract must be in writing, subscribed by the party to be charged, and must contain such description of the land, either in terms or by reference, that the property may be identified without resort to parol evidence.

Eaton et al. vs. Wilkins, 163 Cal. 742.

A description of land in a deed as being in the county of "Ventura, State of California, and bounded and particularly described as follows, to wit: The west half of the southwest quarter of section 12, No. 31, containing 70 acres, more or less," is *prima facie* insufficient to identify the property, but extrinsic evidence is admissible as a means of such identification, and reference may be made to the county records for that purpose.

Thompson vs. McKenna, 22 Cal. App. 129; citing *McLauchlan vs. Bonyng*, 15 Cal. App. 239; *Fox vs. Townsend*, 152 Cal. 51; *Houghton vs. Kern Valley Bank*, 157 Cal. 289.

Any description in a deed by which the property may be identified by a competent surveyor, with reasonable certainty, either with or without the aid of extrinsic evidence, is sufficient.

Thompson vs. McKenna, 22 Cal. App. 129; citing *Best vs. Wohlford*, 144 Cal. 733.

Standing alone and unaided by other evidence, a description of land in an assessment and in all the tax proceedings, as "In the city of Los Angeles, Main Street Tract, lot 3, block A," is insufficient for uncertainty. Such description may be aided and the land intended to be assessed sufficiently identified by uncontradicted evidence that there was in that city only one tract of land known and designated as the Main Street Tract, a map of which was on record in the recorder's office, and that lot 3, block A, was clearly marked and designated thereon.

Campbell vs. Shafer, 162 Cal. 206; citing *Baird vs. Monroe*, 150 Cal. 560; *Miller vs. Williams*, 135 Cal. 183; *Best vs. Wohlford*, 144 Cal. 733.

A description in an assessment which accurately describes the land in accordance with a recorded map is valid and sufficient to charge the owners with notice,

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notwithstanding they acquired their title to the land by a description making reference to another map of later record.

Kehlet et al. vs. Bergman, 162 Cal. 217; citing *Best vs. Wohlford*, 144 Cal. 733.

The question as to the lots or parcels in which the land is to be sold is controlled, as a general rule, by the assessment list. Where several lots in a block are contiguous, and are owned by a single individual, they may properly be assessed as one parcel (citing *People vs. Morse*, 43 Cal. 534; *Cooper vs. Miller*, 113 Cal. 238). If so assessed, there seems to be no good reason for holding that a sale of them in bulk is not, in effect, a sale of a single parcel. There may, no doubt, be conditions under which a joint assessment of separate lots would be improper, as, for example, where lots are not contiguous, or improvements on one are charged against all (citing *Terrill vs. Groves*, 18 Cal. 149). The mere fact that the sale in this case included several lots sold, apparently, in gross, does not, under the rule declared in *Cooper vs. Miller*, *supra*, establish that the several lots did not, together, form a single parcel.

Houghton vs. Kern Valley Bank, 157 Cal. 289.

Under section 3650 of the Political Code, the descriptions in the assessments of land included within the exterior limits of a Mexican grant containing upwards of six thousand acres, which, after giving the name of the ranch, merely describes the property as "being fractional section 24, T. 1 N., R. 14 W.," and "fractional section 25 T. 1 N., R. 14 W.," are insufficient to identify the property assessed when no survey of the land into congressional sections had ever been made.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 536.

After a principal meridian and base line have been established and the exterior lines of the township have been surveyed, neither the sections nor their subdivisions can be said to have any existence until the township is divided into sections and quarter sections by an approved survey. The tract has no separate legal identity until the survey is made and approved under the authority of congress.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Bullock vs. Rouse*, 81 Cal. 594.

A description of property assessed to a telegraph company, as the "Right to occupy the streets of the city of Los Angeles," without other words of description or identification, must be construed as limited to rights in the streets of Los Angeles derived by the telegraph company from the State of California and not covered by its federal franchise. Such description is not so imperfect as to invalidate the assessment. Moreover, it will not be assumed, in the absence of evidence, that the assessor included in such assessment, which in express terms includes the rights granted by the state, other property which he had no right or power to assess.

Western Union Telegraph Company vs. City of Los Angeles, 169 Cal. 124; *Postal Telegraph Cable Company vs. County of Los Angeles*, 160 Cal. 129; affirming *Western Union Telegraph Company vs. Hopkins*, 160 Cal. 106. See, also, *Postal Telegraph Cable Company vs. City of Los Angeles*, 164 Cal. 156.

An assessment upon property described as the "franchise of the Postal Telegraph Cable Company in the city of Los Angeles," is to be deemed to refer solely to its state franchise in the streets of that city, and not to its federal non-taxable franchise under the act of congress of July 24, 1866, and is a sufficient description of the state franchise.

Postal Telegraph Cable Company vs. City of Los Angeles, 164 Cal. 156; citing *Western Union Telegraph Company vs. Los Angeles*, 160 Cal. 124; *Postal Telegraph Cable Company vs. Los Angeles*, 160 Cal. 129.

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Under the provisions of the act of 1897 (Statutes 1897, p. 254), authorizing the organization and government of irrigation districts, assessed property described as "Modesto Blk. 123, lots 1 to 5 inclusive," in the assessment book under the heading "Description of Property," is sufficient.

Corson vs. Crocker, 31 Cal. App. 626.

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Under the act of March 15, 1907 (Statutes 1907, p. 290), and amendments thereto, not only is the selling or offering for sale of lots of land in contravention of the provisions of this statute, by reference to an unrecorded map or plat, expressly prohibited, but the act makes it a misdemeanor so to do.

King vs. Johnson, 30 Cal. App. 63.

Where the description of land in a deed is made by reference to a map and also to the survey upon which the map is based, it will be presumed, in the absence of evidence to the contrary, that the map correctly represents the survey, and the latter need not be looked to; but if it be shown that a discrepancy exists between the map and the survey, the latter must prevail.

Whiting vs. Gardner, 80 Cal. 78; citing *O'Farrell vs. Harvey*, 51 Cal. 125; *Penry vs. Richards*, 52 Cal. 496.

A map of a town made by one who does not own the land represented thereon, and who is not shown to have made it with the consent or by the authority of the owners of the land, and which is not referred to or recognized in a conveyance of the land by the owner thereof, can have no effect as evidence of the question of the dedication of a street by such owner.

City of Eureka vs. Croghan, 81 Cal. 524.

A deed of town lots which gives the dimensions of the boundaries thereof, and describes them by the numbers of the lots and block, referring to a plat thereof, is not upon its face void for uncertainty, though the description is not sufficiently certain without production, by one claiming under it, of the plat therein referred to, or of its contents, and parol evidence is admissible for the purpose of identifying a plat offered in evidence as the one referred to in the deed.

Redd vs. Murry, 95 Cal. 48.

A map is not an "instrument" which affects the title or possession of real property, nor is it an instrument which is to be executed by the party who prepares it, or of which an execution can be acknowledged; but it is sufficient if it be deposited in the recorder's office, and a map so deposited is properly referred to as being of "record" therein, and may be received in evidence, even though it be not acknowledged.

Colton Land and Water Co. vs. Swartz, 99 Cal. 278; citing *Hoag vs. Howard*, 55 Cal. 564.

Parol evidence is admissible to show that a tract of land described in a deed as a part of "Colton Addition" lies within the limits of the city of Colton.

Colton Land and Water Co. vs. Swartz, 99 Cal. 278; citing *Heinlen vs. Heilbron*, 97 Cal. 101.

If a party purchases a block of land according to the official map of a city, and his purchase is so described in the deed, a further description of the block by metes and bounds, or courses and distances, is subordinate to the description of the block by its number upon the map, and must give way to the number in case of conflict.

Masterson vs. Munro, 105 Cal. 431.

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The description of a lot in the assessment and diagram merely by a particular number, which is the number that it bears on the official map of the city, is insufficient if there is nothing contained in the assessment referring to such official map. The court can not take judicial notice that there is such a map, and the property owner is not charged with knowledge of it.

Labs vs. Cooper, 107 Cal. 656; citing *San Francisco vs. Quackenbush*, 53 Cal. 52; *Norton vs. Courtney*, 53 Cal. 691; distinguishing *Whitney vs. Quackenbush*, 54 Cal. 306; *Williams vs. McDonald*, 58 Cal. 527; *Brady vs. Page*, 59 Cal. 52; *Williams vs. Savings and Loan Soc.*, 97 Cal. 122. See, also, *McLauchlan vs. Bonyngue*, 15 Cal. App. 239.

In an action for the recovery of taxes the block-books are admissible in evidence.

City of Santa Barbara vs. Eldred, 108 Cal. 294.

A description of the property conveyed by a deed as lots 3 and 4, containing ten acres each, in Reiner's subdivision of lot 1103, said subdivision recorded in "book 1, page 184, records of San Diego County," when taken in connection with the map referred to, is sufficient.

McCullough vs. Olds, 108 Cal. 529.

Where a tract of land has been subdivided into lots or blocks, and a map thereof made on which the lots or blocks are designated by numbers, a description of the lots or blocks by the numbers so designated is sufficient, provided the map can be produced and identified.

McCullough vs. Olds, 108 Cal. 529.

An assessment for city taxes of lots and blocks, in specified tracts, named, constituting subdivisions of those tracts, and not of the city, which contain no reference to any map of the tracts, or to any city map, and an assessment for county taxes which, in addition to the same defects, does not state in which city or town the lots are situated, are each insufficient and void.

Miller vs. Williams, 135 Cal. 183; citing *Labs vs. Cooper*, 107 Cal. 656; *Cadwalader vs. Nash*, 73 Cal. 43; *Keane vs. Cannonan*, 21 Cal. 291; *People vs. Mahoney*, 55 Cal. 286.

NOTE.—It appears that at the trial of this action no maps or plats were offered in evidence tending to identify the assessed property. This case has been distinguished in several later cases. See *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Townsend*, 152 Cal. 51. The case was also affirmed in *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530; *San Diego Realty Co. vs. Cornell*, 150 Cal. 637; *Wright vs. Fox*, 150 Cal. 680; *Fox vs. Townsend*, 152 Cal. 51; *Chapman vs. Zoberlein*, 152 Cal. 216.

A description which would suffice in an agreement to convey, or in a deed, may be bad in an assessment. In the first case the court might inquire as to the intention of the parties, but in the other the owner has no part in the proceedings, which are hostile, and to every step in which he is objecting. The assessment is made with a view to a possible sale, and the property should therefore be so described as to enable the owner to know what land is charged with the tax, and also to enable a possible purchaser to know what land is offered for sale. To decide this matter there should be no uncertainty as to what land he is dealing with. Hence, the description should be sufficient in itself to identify the land, or if reference to a map on record is required, that should be indicated in the assessment.

Miller vs. Williams, 135 Cal. 183;

McLauchlan vs. Bonyngue, 15 Cal. App. 239.

In an action to quiet title to a specified lot and block in a certain rancho "according to the official map thereof on file in the office of the county recorder," which map was proved by plaintiff in derailing his title, where the defendant claimed under a deed from the collector of an irrigation district comprising the

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same rancho, executed for the non-payment of an assessment by the plaintiff, and giving the same description of lot and block as in the complaint, without referring to the map, and the admission of which was objected to for that omission—parol evidence was admissible for the defendant to show that at the time of the assessment there was but one such lot and block in that rancho, and that that fact was then well known, as tending to identify the lot and block deeded with that described in the complaint, and that plaintiff was not misled by the assessment, but was fully informed that his lot was chargeable therewith.

Best vs. Wohlford, 144 Cal. 733; affirmed in *Best vs. Wohlford*, 153 Cal. 17; *McLauchlan vs. Bonyngc*, 15 Cal. App. 239.

An assessment of land in an irrigation district not included in the government subdivisions or in a city lot does not require the description to be given in any particular form other than that it shall be "sufficient to identify it." The designation of a tract of land as a portion of a larger tract, by number and block, without any reference to a map, may be sufficient to identify it; and, if so, the omission to refer to a map is not fatal to the description. The description will be sufficient if it affords the owner the means of identification, and does not positively mislead him, or is not calculated to mislead him.

Best vs. Wohlford, 144 Cal. 733; affirmed in *Best vs. Wohlford*, 153 Cal. 17. See, also, *Polomares Land Co. vs. Los Angeles County*, 146 Cal. 530.

Although it is not competent to show that any particular map was intended, if none is referred to, yet, if it can be shown that there is only one map of a tract, which includes the lot in controversy, upon which this lot is delineated or designated, and that that map is well known and generally accepted as authentic, it may be received in evidence as tending to identify the land before the court.

Best vs. Wohlford, 144 Cal. 733 (affirmed in *Best vs. Wohlford*, 153 Cal. 17); distinguishing *Labs vs. Cooper*, 107 Cal. 656; *Miller vs. Williams*, 135 Cal. 183.

A deed of a lot of land lying in Twin Lake Park in Santa Cruz County, described as "lot 10, block 2, subdivision No. 6, as the same is shown on the map of Twin Lake Park, made by N. E. Beckwith, surveyor, and filed May 29th, 1890 in the office of the recorder of Santa Cruz County," is not so vague or uncertain as to be void for uncertainty, although the map specifically referred to contains no plat of subdivision No. 6, if there is of record when the deed was made, another and only map of such subdivision, made by a different surveyor, which as platted shows a lot designated as "lot 10, block 2."

Leonard vs. Osburn, 169 Cal. 157; citing *Rogers vs. McCartney*, 3 Cal. App. 34.

Where there was a stipulation as to a recorded map of a tract designating with certainty the property referred to in the assessment, it is to be taken as meaning that there is but one such map, and the property is sufficiently identified by means thereof. It was permissible to show, in aid of the description, that it was in fact sufficient to identify the land, and to show the recorded map of that tract for that purpose.

Baird vs. Monroe, 150 Cal. 560; distinguishing *Miller vs. Williams*, 135 Cal. 183. See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

It is permissible in aid of a description in an assessment to show that it is in fact sufficient to identify the land. The real and only essential, so far as the description is concerned, is that it shall be sufficient in itself to definitely inform the property owner as to the exact property assessed (citing *Best vs. Wohlford*, 144 Cal. 733). The description given must always, of course, be sufficient to apprise

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the owner as to the exact property assessed to him, but when the description is such that, in the light of the knowledge which it must be presumed is possessed by property owners of the community in which the property is situated, it accomplishes this result, it is sufficient for all assessment purposes although evidence may be necessary to apply the description to the surface of the earth.

Baird vs. Monroe, 150 Cal. 560; distinguishing *Miller vs. Williams*, 135 Cal. 183; *Labs vs. Cooper*, 107 Cal. 656; *Cadwalader vs. Nash*, 73 Cal. 43; *Keane vs. Cannovan*, 21 Cal. 291; *People vs. Mahoney*, 55 Cal. 286. See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

Under the existing revenue laws, a description in an assessment of real property, as follows; "In Los Angeles County. In Electric Ry. Homestead Assn. Tr. Lot 17, Block 20," is *prima facie* insufficient to identify the land assessed, and there is no presumption that there is any map in existence a reference to which might serve to identify the land.

Fox vs. Townsend, 152 Cal. 51; affirming *Miller vs. Williams*, 135 Cal. 183; *Labs vs. Cooper*, 107 Cal. 656. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

A description of property in a tax deed as "Lying and being in the county of Kern, State of California and described as follows, to wit: E. $\frac{1}{2}$ of block 2, Kelly's Addition to Delano," may be explained and rendered certain by the introduction in evidence of the recorded map of Kelly's addition to Delano, accompanied by proof of the location of the block on the ground and that it was marked by stakes set at each corner, and that there was no other recorded map of the addition.

Fitzimons vs. Atherton, 162 Cal. 630; citing *Best vs. Wohlford*, 144 Cal. 737; *Baird vs. Monroe*, 150 Cal. 569; *Fox vs. Townsend*, 152 Cal. 53; *Chapman vs. Zoberlein*, 152 Cal. 216.

The description in the assessment roll of a piece of land assessed as "Lot 34 in University Addition Tract," in the city of Los Angeles, in Los Angeles County, without any reference to any map of the tract, nor anything to indicate the character of the "University Addition Tract," the location in the city of the addition, nor the relative location of lot 34 thereof, is *prima facie* insufficient to make a valid assessment.

Chapman vs. Zoberlein, 152 Cal. 216; citing *Miller vs. Williams*, 135 Cal. 183; *Labs vs. Cooper*, 107 Cal. 656; *San Diego Realty Co. vs. Cornell*, 150 Cal. 637; *Fox vs. Townsend*, 152 Cal. 51. See, also, *McLauchlan vs. Bonyng*, 15 Cal. App. 239.

Sections 3 and 4 of the act of March 9, 1893, as amended in 1901 (Statutes 1893, p. 96; Statutes 1901, p. 288), requiring the recording of maps of subdivisions of lands into small lots for purposes of sale, and providing a penalty for selling or offering for sale such lots before such maps are filed and recorded, when properly construed only prohibits the sale or offering for sale of the certain classes of lots specified therein before a map made, acknowledged, certified, and indorsed as specified in that act shall have been presented to the recorder to be recorded.

Bentley vs. Hurlburt, 153 Cal. 796.

A description of the premises such as will serve to identify the property is essential to a valid declaration of homestead. Where the description is dependent for its sufficiency upon some other instrument, such as a map, the map, properly identified, must be produced, or in some manner established, or the description will fail. To make a sufficient description, however, it is not necessary that the deed should refer to a map actually of record.

Donnelly vs. Tregaskis, 154 Cal. 261; citing *Caldwell vs. Center*, 30 Cal. 540; *Cadwalader vs. Nash*, 73 Cal. 45; distinguishing *Estate of Ogburn*, 105 Cal. 95.

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XIII. Assessments. Description; maps, plats, etc.

It appears to be thoroughly settled that where an owner of land sells the same as fronting on or bounded by a certain space designated in the conveyance as a street or way, which he also owns, he covenants that the same is a street or way, and will not be heard thereafter to deny it as against his grantee or his successors.

Petitpierre vs. Maguire, 155 Cal. 242; citing *Breed vs. Cunningham*, 2 Cal. 361; *Kittle vs. Pfeiffer*, 22 Cal. 484.

A sale of a lot of land with reference to a map showing the lot as bordering on a street, before the recordation of the map which was subsequently recorded, creates an easement in favor of the purchaser of the lot as against the parcel of land shown on the map as a street.

Eltinge vs. Santos, 171 Cal. 278.

If the owner of land produces to purchasers of various lots a map showing that a certain strip is an alley and represents to them that the strip is an alleyway, which representations are acted upon, the alley is thereby established.

Smith vs. Smith, 21 Cal. App. 378.

Where the owner of a tract sells the various lots in such manner as to give the purchasers an easement over a strip as an alley, and afterwards conveys the alley, the purchaser of the alley takes only the naked legal title, and that is all that can be assessed against him and be conveyed by tax deed. The easement remains unaffected.

Smith vs. Smith, 21 Cal. App. 378.

Where a public street or highway is made a boundary of land the owner is presumed to own to the center of the street or highway, and a transfer of land bounded thereby passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof, unless different intent appears from the grant.

Merchants vs. Grant, 26 Cal. App. 485.

In an action for partition of lots in Bakersfield, including "lots 1, 2, 3, in block 132, in the Baker Homestead Tract, according to the map of said tract filed in the office of the county recorder," etc., in which an intervenor set forth a tax title thereof from the state, giving the same description, and introduced the assessment book, which merely described the lots; "In Bakersfield, lot 1, 2, 3, block 132," but offered no map or other evidence to identify the lots assessed, the assessment is *prima facie* invalid; and a decree in favor of the intervenor must be reversed.

Where the description in an assessment for taxation is of such a nature as to indicate that the property can ordinarily be located only by reference to some recorded map or plat, though none is referred to in the assessment, and description is *prima facie* invalid; yet it may be sufficient in fact, and whether it is sufficient or not is a question of fact to be determined by the trial court upon such evidence as may be presented to show its sufficiency to identify the land.

Houghton vs. Kern Valley Bank et al., 157 Cal. 289; citing *Miller vs. Williams*, 135 Cal. 183; *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Townsend*, 152 Cal. 51.

A map prepared for the assessor under the provisions of section 3658 of the Political Code, on which the section and fractional section lines purported to be drawn, but which lines were not shown to have been located by any actual survey, and to have been merely arbitrarily drawn on paper by the compiler of the map, is not competent evidence *aliunde* from which the identity of the land assessed could be determined.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Best vs. Wohlford*, 144 Cal. 737; *Labs vs. Cooper*, 107 Cal. 657; *Carter vs. Osborn*, 150 Cal. 620.

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XIV. Assessments. Banks.

XIV. Assessments. Banks.

In the case of savings banks the legislature has declared that all moneys deposited with them shall be assessed to the banks, and not to the depositors. If assessed to the banks and also to the depositors, it would present a clear case of double taxation.

The People ex rel. Burke vs. Badlam, 57 Cal. 594.

Section 3617 of the Political Code, subdivision 6, as amended in 1881, is a general law declaring the general policy of the state upon the subject of taxation of savings and loan corporations; and a loan and savings bank is not entitled to deduct from its solvent unsecured credits its unsecured liability to its depositors for moneys deposited. Such language is broad enough to include savings banks which pay to depositors a specified rate of interest on time deposits, as in the case of borrowed money, as well as those which distribute to depositors the net profits realized by the bank in proportion to the several deposits.

Security Savings Bank and Trust Co. vs. Hinton, 97 Cal. 214;

Farmers, etc., Bank vs. Board of Equalization, 97 Cal. 318.

Where a loan and trust company incorporated to do a loan and trust business, a safe deposit business, and a general banking business, has a savings department in which term savings deposits are received upon a specified rate of interest, the corporation, as respects its term savings deposits, is *de facto* a savings and loan corporation, whether so *de jure* or not, and is properly assessed for taxation upon the amount of credits, claims, debts, and demands due, owing, or accruing for or on account of such term deposits.

City of Los Angeles vs. State Loan and Trust Co., 109 Cal. 396.

There are two plans or systems upon which savings banks may be organized and conducted, in one of which the depositors are the members and the bank is merely their agent, and the members have an interest in the deposits and profits; while in the other plan or system the depositors are mere creditors and have no interest in the profits, and each of these plans or systems accords with the provisions of the Civil Code respecting savings and loan corporations; and the language of section 3617 of the Political Code in respect to taxation is broad enough to include both classes of savings and loan corporations for the purposes of taxation.

City of Los Angeles vs. State Loan and Trust Co., 109 Cal. 396; citing
Security Savings Bank vs. Hinton, 97 Cal. 214.

A bank is entitled to deduct from its solvent credits, all debts due to *bona fide* residents of the state, including amounts due other banks and bankers, whether such credits are secured by pledge or loans on personal property.

Bank of Willows vs. County of Glenn, 155 Cal. 434.

Section 1 of article XIII of the constitution, providing that "all property in the state not exempt under the laws of the United States shall be taxed in proportion to its value, to be ascertained as provided by law," and that "the word 'property' as used in this article and section is hereby declared to include moneys, credits, bonds, stocks," etc., is not self-executing, but merely fixes the liability of property to taxation, and that standard upon which it is based, viz., in proportion to its value, but confides the duty of prescribing the machinery by which to ascertain the value, to the legislature, with which the power of taxation is lodged; and it can not be properly objected to the taxation of shares of national bank stock that they were not assessed in pursuance of the provisions of that section of the constitution.

u y vs. Downer, 116 Cal. 20.

National banks are agencies of the federal government, and are not subject to the taxing power of the state without its consent; but the general government has consented in section 5219 of the revised statutes of the United States that the

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states may tax the stock or shares of national banks, subject to the restrictions, that the taxation, shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state, and the shares of any national banking association owned by nonresidents of any state shall be taxed in the city or town where the bank is located, and not elsewhere.

McHenry vs. Downer, 116 Cal. 20.

The clause in section 5219 of the revised statutes of the United States, that "the taxation shall not be at a greater rate than is assessed upon other moneyed capital," etc., means more than that there shall be no more discrimination with respect to the percentage, or any valuation which might be made, but that taking the assessment, rate of assessment, and valuation together, the taxation on shares of national banks should not be greater than on other moneyed capital, and where there is a discrimination under the state law of taxation of shares of national banks in favor of state banks or other moneyed capital, such discrimination is violative of the act of congress.

McHenry vs. Downer, 116 Cal. 20.

Under section 3608 of the Political Code, shares of stock in national banks are not subject to assessment for purposes of taxation, and the shares of state banks being exempt from taxation under that section, the shares of stock in national banks can not be assessed as other personal property, as the machinery provided therefor works such a discrimination in favor of state banks and against shares of national banks as to be violative of the restrictions of the act of congress, and an assessment and tax of national bank shares is null and void.

McHenry vs. Downer, 116 Cal. 20; citing *Miller vs. Heilbron*, 58 Cal. 133.

The personal assets of a national bank, as distinguished from the shares of stock held by its shareholders, are exempt from state taxation. National banks and their property are withdrawn from the domain of state taxation, except so far as congress has expressly consented that they may be taxed, in section 5219 of the revised statutes of the United States.

People vs. National Bank of D. O. Mills & Co., 123 Cal. 53.

The general and special deposits in a national bank are assessable to the depositors and not to the bank.

People vs. National Bank of D. O. Mills & Co., 123 Cal. 53; citing *Yuba County vs. Adams*, 7 Cal. 35.

The right of the state to exercise its power of taxation over the property of national banks is limited and defined by section 5219 of the revised statutes of the United States; and the state can exercise no power of taxation not therein expressly permitted.

First National Bank of San Francisco vs. City and County of San Francisco, 129 Cal. 96; citing *People vs. National Bank*, 123 Cal. 53.

An assessment of the personal assets of a national bank by the state is not permitted and is void; and taxes collected under such void assessment, and paid under protest, may be recovered back.

First National Bank of San Francisco vs. City and County of San Francisco, 129 Cal. 96; citing *People vs. National Bank*, 123 Cal. 53.

The assessment for taxation by the state of shares of stock in national banks, authorized by section 5219 of the revised statutes of the United States, under the restriction "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state," and also authorized in pursuance of that section by sections 3608, 3609 and 3610 of the

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Political Code, as changed and enacted in 1899, which embody the same restrictions, is not subject to the objection that the method of assessment and taxation of national bank shares under the Political Code does in its practical execution discriminate in favor of state banks and state moneyed corporations and against national banks.

Crocker vs. Scott, 149 Cal. 575; affirming *People ex rel. Burke vs. Badlam*, 57 Cal. 594.

Under the decisions of the federal courts, the mere fact that the shares of stock in national banks and state moneyed corporations are not permitted to be assessed in this state, is not sufficient to show a discrimination in the assessment and taxation of shares of stock in national banks, provided a different method adopted by the state for the assessment and taxation of such state corporations, accomplishes the inclusion in the assessment of the property of said state corporations of all the elements which are embraced in the assessment of shares of stock in national banks to the holders thereof.

Crocker vs. Scott, 149 Cal. 575.

The interpretation of the constitution and laws of the state by this court is recognized by the decisions of the federal courts as conclusive and binding upon the Supreme Court of the United States and all federal courts; and there is nothing in the decisions of the Supreme Court of the United States to preclude this court from holding that, under the constitution and laws of this state, the assessing officers are compelled, in their valuation of the property of state banks and other state moneyed corporations, to include all those elements of value which would be embraced in an assessment of the shares of stock therein.

Crocker vs. Scott, 149 Cal. 575.

Under the constitution of 1879, specifically requiring the assessment and taxation of shares of stock, an assessment thereof according to the market value as required by law, would include every element entering into and giving value to the shares; and the decision of this court in *Burke vs. Badlam*, 57 Cal. 594, sustaining the constitutionality of section 3608 of the Political Code, exempting such shares from taxation, rests solely upon the consideration that by the taxation of the entire property of the corporation, including its franchise, every element giving value to its shares was included, and that to tax the shares besides would be double taxation, not contemplated by the constitution or laws. This construction of the constitution and laws has been for more than twenty-five years the only warrant for the enforcement of the statute exempting the assessment of shares of stock in state corporations.

Crocker vs. Scott, 149 Cal. 575; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 115; *McHenry vs. Downer*, 116 Cal. 20, 28; *Bank of California vs. San Francisco*, 142 Cal. 276, 285.

Under our system of taxation, as construed by the decisions of this court, all of the intangible property of a corporation, including its good-will, or dividend or profit-earning power, may be properly included in the assessment of its franchise, the value of which is to be ascertained by deducting from the aggregate market value of the shares the value of the tangible property of the corporation.

Crocker vs. Scott, 149 Cal. 575; affirming *San Jose Gas Co. vs. January*, 57 Cal. 614; *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 117; *Spring Valley Water Works vs. Barber*, 99 Cal. 36, 38; *Bank of California vs. San Francisco*, 142 Cal. 276, 287; *Stockton Gas, etc., Co. vs. County of San Joaquin*, 148 Cal. 313.

When a savings bank has been assessed as required by section 3617 of the Political Code, on account of all of its deposits, to the exclusion of its depositors, it is necessarily implied that the bank shall be subject to an assessment thereon while

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its deposits remain a part of its assets. When it has been so assessed, and afterwards during the same year has invested its deposits in other securities, it can not be required to pay a tax on its debt to the depositors for money which it no longer owns. A savings bank, like any other corporation or natural person, in the contemplation of the law should be assessed but once on all of its property, and not both upon its property and also upon money invested therewith.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674. See, also, *Chesbrough vs. San Francisco*, 153 Cal. 559; *Canfield vs. Los Angeles County*, 157 Cal. 617; *Doheny vs. Los Angeles County*, 157 Cal. 624.

The law simply demands that a bank shall pay taxes only upon all of its property which is not exempt from taxation by virtue of the constitution itself.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674.

Where a savings bank has been assessed upon all of its property, it can not thereafter during the same year, be assessed on municipal and state bonds, purchased with its deposits during the same year and which are by the constitution exempt from taxation, on the alleged ground that the moneys so invested represent solvent credits due from the bank to its depositors, as that would constitute double taxation. The principle is that those bonds represent an interest in the property; and since the whole property has been assessed for its full value, the bond interest has already been included in the assessment.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674. See, also, *Chesbrough vs. San Francisco*, 153 Cal. 559; *Canfield vs. Los Angeles County*, 157 Cal. 617; *Doheny vs. Los Angeles County*, 157 Cal. 624.

XV. Assessments. Bonds.

Railroad bonds which are held in this state by the owners have their *situs* here and are taxable in this state, notwithstanding they are secured by mortgage of railroad property situated out of the state.

Mackey vs. City and County of San Francisco, 113 Cal. 392; citing *San Francisco vs. Lux*, 64 Cal. 481; distinguishing *People vs. Hibernia Bank*, 51 Cal. 244. But see *Germania Trust Co. vs. San Francisco*, 128 Cal. 589.

On March 28, 1895 (Stats. 1895, p. 310), section 3617 of the Political Code was amended so as to define "the term 'property' includes moneys, credits, bonds (*except of railroad or quasi-public corporations*)," etc.,—the italicized words being the amendment. The supreme court held that "touching this statute it need only be said that, if the constitution did not require the taxation of bonds of railroads and other quasi-public corporations, the amendment in question was wholly unnecessary; and if the constitution did require such bonds to be taxed, it was not in the power of the legislature to except them."

Mackey vs. City and County of San Francisco; 113 Cal. 392; *Germania Trust Co. vs. San Francisco*, 128 Cal. 589.

The estate of Fair was assessed in 1892 with 1915 six per cent bonds of the Southern Pacific Railroad of Arizona, valued by the assessor at \$1,915,000. The state board of equalization for said year raised the San Francisco assessment roll twenty per cent, thereby increasing such bond assessment to \$2,298,000, or \$383,000 above the face value of such bonds. The lower court, affirmed by the supreme court, held such increase illegal and gave judgment for taxes on the excess, with delinquency penalties, etc.

Mackey vs. City and County of San Francisco, 113 Cal. 392; citing *DeFremery vs. Austin*, 53 Cal. 380; *Bank of Mendocino vs. Chalfant*, 51 Cal. 369.

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The fact that the holder of railroad bonds secured by mortgage is taxed thereon but once does not necessarily prevent the taxation from being double. Double taxation does not necessarily consist in assessing the same property twice to the same person, but may consist in requiring a double contribution to the same tax on account of the same property, though the assessments are to different persons.

Germania Trust Co. vs. City and County of San Francisco, 128 Cal. 589; citing *San Francisco vs. Fry*, 63 Cal. 470; *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *McHenry vs. Doucier*, 116 Cal. 20. See, also, *Estate of Fair*, 128 Cal. 607; *Estate of Pichoir*, 128 Cal. 615; *Napa Savings Bank vs. County of Napa*, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674.

The amendment of 1895 to section 3617 of the Political Code, excepting the bonds of railroad and other quasi-public corporations from the definition of property liable to taxation, is constitutional and valid.

Germania Trust Co. vs. City and County of San Francisco, 128 Cal. 589. See, also, *Mackey vs. San Francisco*, 113 Cal. 392; *Estate of Fair*, 128 Cal. 607; *Estate of Pichoir*, 128 Cal. 615.

Bonds of a railroad corporation *secured by mortgage of its property within this state* are not assessable for taxation to the holders of such bond.

Germania Trust Co. vs. City and County of San Francisco, 128 Cal. 589; distinguishing *Mackey vs. San Francisco*, 113 Cal. 392, and *Central Pacific R. R. Co. vs. Board of Equalization*, 60 Cal. 59. See, also, *Estate of Fair*, 128 Cal. 607; *Estate of Pichoir*, 128 Cal. 615.

Bonds of a railroad secured by mortgage upon the property of such railroad *situate wholly within this state* are not taxable to the holders thereof, but are considered as an interest in and a part of the property assessed to such railroad.

Germania Trust Co. vs. City and County of San Francisco, 128 Cal. 589. See, also, *Estate of Fair*, 128 Cal. 607; *Estate of Pichoir*, 128 Cal. 615.

NOTE.—These cases should be distinguished from *Mackey vs. San Francisco*, 113 Cal. 392. There the property securing the bonds was situate entirely outside this state and hence was not taxed here.

A tax upon the bonds of railroad companies of this state, secured by mortgage upon their property, which is required to be assessed at its full value to such companies, is double taxation, forbidden by the constitution.

Estate of James G. Fair, 128 Cal. 607; affirming *Germania Trust Co. vs. San Francisco*, 128 Cal. 589. See, also, *Estate of Pichoir*, 128 Cal. 615; *Napa Savings Bank vs. County of Napa*, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674.

The bonds of *private domestic corporations* secured by mortgage or deed of trust can only be taxed, by assessing the value of the security as an interest in the property encumbered for their payment. They can not be assessed as mere personal debts or credits, and such an assessment is void.

Estate of James G. Fair, 128 Cal. 607.

NOTE.—In other words, such bonds, or rather the mortgage or deed of trust given as security for the bonds, can only be assessed by treating such bonds as an interest in the property pledged; which is tantamount to a holding that such bonds are not assessable *if all the property of the corporation has been taxed for the same year*. Compare with *Chesebrough vs. San Francisco*, 153 Cal. 559.

Bonds of foreign railroad companies owned by a resident of this state, which are deposited without the state, but which are not held for management in the course of the permanent business of the owner in another state, are not to be classed with chattels having a local *situs* for the purposes of taxation, but, like ordinary credits, attend the person of the creditor, and are taxable in this state at the domicile of the owner. The assessment of such bonds in this state depends neither upon the presence

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in this state of the evidences of debt, nor upon whether they are or are not negotiable in form.

Estate of James G. Fair, 128 Cal. 607; distinguishing *People vs. Home Insurance Co.*, 29 Cal. 533.

Bonds of foreign corporations not doing business in this state, which belonged to a nonresident, and were not brought to nor kept within this state for any local business purpose, do not constitute property within the state, within the purview of the inheritance tax law of 1911, by reason of the mere fact that the bonds themselves were, at the time of the death of the owner, physically present in a safe deposit box within this state.

Estate of James McCahill, 171 Cal. 482; citing *Murphy vs. Crouse*, 135 Cal. 19; *McDougald vs. Low*, 164 Cal. 110; distinguishing *Estate of Fair*, 128 Cal. 607, and *People vs. Home Ins. Co.*, 29 Cal. 533.

A tax upon the bonds of railroads and other quasi-public corporations of this state secured by mortgages or deeds of trust on property situate wholly within this state, the encumbered property of which is required to be assessed at its full value to such corporations, is double taxation, forbidden by the constitution.

Estate of Henry Pichoir, 128 Cal. 615; affirming *Germania Trust Co. vs. San Francisco*, 128 Cal. 589; *Estate of Fair*, 128 Cal. 607; See, also, *Napa Savings Bank vs. County of Napa*, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. App. 674.

NOTE.—These cases are to be distinguished from the bonds assessed in *Mackey vs. San Francisco*, 113 Cal. 392, in which case the bonds were secured by property situate in Arizona and not taxed in this state.

Bonds of *foreign railroads* payable in the city of New York, which were the property of a deceased resident of this state, and were distributed by the superior court to trustees named in the will, are taxable at the domicile of the trustees; and where only one of the trustees is a resident of this state, and the nonresident trustee has the bonds on deposit in the city of New York, in the joint names of both trustees, are taxable in this state only as to the undivided one-half thereof legally owned by the resident trustee.

Mackey & Dey vs. City and County of San Francisco, 128 Cal. 678.

Where it appears that United States bonds were purchased by a taxpayer as an investment, and not for the purpose of evading taxation, a tax upon the money invested therein is illegal.

Columbia Savings Bank vs. County of Los Angeles, 137 Cal. 467.

The constitution not only provides that all "property" shall be taxed, but defines the word "property" and expressly includes "bonds" in that definition, thus placing it beyond the power of the legislature or the courts to say that bonds are not property within the meaning and intent of the constitution. The same is true as to shares of stock, which are also expressly included.

Crocker vs. Scott, 149 Cal. 575, 584; citing *Mackey vs. San Francisco*, 113 Cal. 392, 397; *Bank of California vs. San Francisco*, 142 Cal. 276, 285.

Where a savings bank has been assessed upon all of its property, it can not thereafter, during the same year, be assessed on municipal and state bonds, purchased with its deposits during the same year and which are by the constitution exempt from taxation, on the alleged ground that the moneys so invested represent solvent credits due from the bank to its depositors, as that would constitute double taxation. The principle is that those bonds represent an interest in the property;

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and since the whole property has been assessed for its full value, the bond interest has already been included in the assessment.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545;

Savings Bank of St. Helena vs. County of Napa, 17 Cal. App. 674. See, also, *Chesbrough vs. San Francisco*, 153 Cal. 559; *Canfield vs. Los Angeles County*, 157 Cal. 617; *Doheny vs. Los Angeles County*, 157 Cal. 624.

XVI. Assessments. Canals, ditches, etc.

Weirs and dams connected with the canal which were constructed, maintained, and owned by a third person, are property capable of separate ownership, and should be assessed to the true owner thereof, when known.

Kern Valley Water Co. vs. County of Kern, 137 Cal. 511.

The levees of the canal consisting of embankments constructed along its margin to confine the waters in its channel, are a part of the canal, and are not improvements requiring a separate assessment.

Kern Valley Water Co. vs. County of Kern, 137 Cal. 511.

Canals or water ditches for irrigating purposes, though required to be assessed at a rate per mile for that portion within the county, must be separately assessed, when situated in two or more school, road, or other revenue districts, as to the portion thereof situated in each district.

Kern Valley Water Co. vs. County of Kern, 137 Cal. 511.

The assessment of a canal situated in more than one school district, and also in more than one road district, which does not show in what school districts and road districts it was thus situated, and in which the respective parts of the canal situated in the respective road districts were not separately assessed or otherwise designated, so that the tax due in each district could be ascertained therefrom, is invalid, and the tax levied thereon is void.

Kern Valley Water Co. vs. County of Kern, 150 Cal. 801; affirming *Kern Valley Water Co. vs. County of Kern*, 137 Cal. 511.

Wells, pumping machinery and pipe-lines on water-bearing lands, together with such lands, constitute "real estate" within the definition of that term as used in the revenue act, which includes "the possession of claimants, ownership of right to the possession of land," and all of such property should be assessed and taxed as real estate.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

A reclamation district is a public agency of the state; and property acquired thereby, which is indispensable to the execution of its objects, is public property of the state, within the meaning of the constitution, and is exempt from state and county taxes as such.

Reclamation District No. 551 vs. County of Sacramento, 134 Cal. 477; citing *People vs. Reclamation District No. 551*, 117 Cal. 114; *Hensley vs. Reclamation District No. 556*, 121 Cal. 96; *County of Kings vs. County of Tulare*, 119 Cal. 509.

The water right, when acquired, became an easement appurtenant to the land and passed with it, upon the foreclosure sale in the same manner as any other appurtenance or fixture passes with the title and possession of land. It was an incident of the land and would pass as such by a conveyance of the land, without

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express mention and without any reference thereto, such as by the use of the word "appurtenances" or otherwise.

Stanislaus Water Co. vs. Bachman, 152 Cal. 716; citing *Farmer vs. Ukiah Water Co.*, 56 Cal. 13; *Cave vs. Crafts*, 53 Cal. 140; *Cross vs. Kitts*, 69 Cal. 221; *Smith vs. Corbitt*, 116 Cal. 591; *Merritt vs. Judd*, 14 Cal. 72; *Union Water Co. vs. Murphy Flat Co.*, 22 Cal. 231; *Tibbitts vs. Moore*, 23 Cal. 215. See, also, *Anaheim, etc., Water Co. vs. Ashcroft*, 153 Cal. 152.

That water in its natural situation upon the face of the earth, whether as a flowing stream, as a lake or pond, or as percolations in the soil, is real property, will not be disputed. That it may become personality by being severed from the land and confined in portable receptacles is also evident.

Stanislaus Water Co. vs. Bachman, 152 Cal. 716; distinguishing *Heynemann vs. Blake*, 19 Cal. 595.

The earth is composed of land and water, and the water is not different in this respect from other material substances composing a part of the earth. The business of collecting water in reservoirs, conducting it in pipes to houses of a city, and there selling and delivering it is a process of severing the water from its connection with the earth and changing it into personal property. But the substance, the water, does not become personality until severance is complete. The right to the water in the pipes and the pipes themselves usually constitute an appurtenance to real property in such cases, and, if so, the water usually retains its character as realty until severance is completed by its delivery from the pipes to the consumer.

Stanislaus Water Co. vs. Bachman, 152 Cal. 716.

The right in water which has been diverted into ditches and other artificial conduits, for the purpose of conducting it to land for irrigation, has been uniformly classed as real property in this state.

Stanislaus Water Co. vs. Bachman, 152 Cal. 716. See, also, *Anaheim, etc., Water Co. vs. Ashcroft*, 153 Cal. 152.

The right to water must be treated in this state as it always has been treated, as a right running with the land and as a corporeal privilege bestowed upon the occupier or appropriator of the soil; and as such, has none of the characteristics of mere personality (*Hill vs. Newman*, 5 Cal. 446). The right to have water flow from a river into a ditch is real property; and so also is the water flowing in the ditch (*Lower Kings River, etc., Co. vs. Kings River, etc., Co.*, 60 Cal. 410). A wrongful diversion of water flowing in a ditch is an injury to real property (*Last Chance, etc., Co., vs. Emigrant D. Co.*, 129 Cal. 378). The right to take water from a river and conduct it to a tract of land is realty (*South Tule, etc., Co. vs. King*, 144 Cal. 454). The right to have water flow through a pipe from a reservoir to and upon a tract of land is an appurtenance to the land (*Standard vs. Round Valley, etc., Co.* 77 Cal. 403). An undivided interest in a ditch and in the water flowing therein is real property (*Hayes vs. Fine*, 91 Cal. 221). A ditch for carrying water is real estate (*Smith vs. O'Hara*, 43 Cal. 376; *Bradley vs. Harkness*, 26 Cal. 77). And where one person has water flowing in a ditch and another has the right to have a part of such water flow from the ditch to his land for its irrigation, the right of the latter is a servitude upon the ditch and is real property (*Dorris vs. Sullivan*, 90 Cal. 286).

Stanislaus Water Co. vs. Bachman, 152 Cal. 716. See, also, *Anaheim Water Co. vs. Ashcroft*, 153 Cal. 152.

Water, in its natural state, is part of the land. Like any other part thereof, it may become personal property by being severed from the realty, but not until then. When it is sold for domestic use and delivered by means of pipes to the premises in the usual manner, the pipes themselves are fixtures and part of the realty, and

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this severance takes place when the water is taken from the pipes by the consumer. In the case of water for irrigation, delivered in ditches or pipes, the severance does not take place at all. The water, by that use of it, permeates the soil and remains a part of the realty. The water, therefore, of an irrigation company, stored in its reservoir, is real property, the right to the use of which may become appurtenant to the land.

Copeland vs. Fairview Land and Water Company, 165 Cal. 148.

Under the law of this state as established at the beginning, and as embodied in the Civil Code of 1872, the water right which a person gains by diversion from a stream for a beneficial use is a private right, which is subject to ownership and disposition by him as in the case of other private property. The same is true as to the water rights in streams upon the public domain of California which the act of congress of July 1, 1866, confirmed or provides for the acquisition of in the future.

Thayer vs. California Development Company, 164 Cal. 117.

Water rights are classed as real property.

Bree vs. Wheeler, 4 Cal. App. 109; citing *Hayes vs. Fine*, 91 Cal. 498; *Blankenship vs. Whaley*, 124 Cal. 304. See, also, *Bree vs. Wheeler*, 129 Cal. 146.

Water flowing in a stream is real property, and a parcel of the riparian land inseparably annexed to it.

Shurtless vs. Kehrer, 163 Cal. 24.

When there is nothing to show that the ditch was separately assessed for taxation, or was assessed at all, it was not necessary for the plaintiff to show payment of taxes thereon. The law does not require an *cavement* to be assessed; and the burden was on the defendant to show that it had been assessed.

Silva vs. Hawn, 10 Cal. App. 544; citing *Harvey vs. Meyer*, 117 Cal. 60; *Oneto vs. Restano*, 78 Cal. 374, 379.

The assessment of riparian lands to one person, without any intention appearing to exclude therefrom the appurtenant riparian rights, and the assessment of such rights to another, constitutes double taxation within the prohibition of the constitution and the Political Code.

Spring Valley Water Co. vs. County of Alameda, 24 Cal. App. 278; citing *Germania Trust Co. vs. San Francisco*, 128 Cal. 589; *Estate of Fair*, 128 Cal. 607.

A municipal corporation may assess a part of a water system, that is, canals, pipe-lines, and rights of way, located within the city limits, although the system is appurtenant to the land without the municipality.

Temescal Water Co. vs. Niemann, 22 Cal. App. 174; citing *San Francisco, etc., Railway vs. Scott*, 142 Cal. 222; *Kern Valley Water Co. vs. County of Kern*, 137 Cal. 511; *Farmer vs. Ukiah Water Co.*, 56 Cal. 11; distinguishing *Coonradt vs. Hill*, 79 Cal. 587.

The use of water for sale, rental, and distribution to the public generally is a public use.

San Joaquin and Kings River Canal and Irrigation Co. vs. James J. Stevenson, 164 Cal. 221. See, also, same case in 26 Cal. App. 221.

A foreign corporation, whose articles of incorporation state that it is formed and empowered to construct canals in California leading from San Joaquin river, for the carriage of passengers and freight, and for the purpose of irrigation, and to

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supply water to the inhabitants of cities and towns in California, is authorized to carry water in its canals to be devoted to public use for the purposes of irrigation, navigation, and commerce.

San Joaquin and Kings River Canal and Irrigation Co. vs. James J. Stevenson, 164 Cal. 221.

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The word "debts" as used in the revenue act (of 1861) includes not only debts due and payable at the time the tax takes its lien, but debts to become due thereafter.

People vs. Arguello, 37 Cal. 524.

A solvent debt, whether secured by mortgage or not, is property within the meaning of the constitution (of 1849), and can not be exempted from taxation by the legislature.

People vs. Eddy, 43 Cal. 331; affirming *People vs. McCrerry*, 34 Cal. 433; *People vs. Gerke*, 35 Cal. 677; *People vs. Black Diamond, etc., Co.* 37 Cal. 54; *People vs. Whartenby*, 38 Cal. 461.

Where the general revenue law subjects all solvent debts to taxation, any other law which singles out a class of such debts, as debts secured by mortgage, and exempts them from taxation, is repugnant to the constitution which provides that taxation shall be equal and uniform throughout the state. The acts of April 1st and April 4th, 1870 (Statutes 1869-70, pp. 584, 710), exempting debts secured by mortgage from taxation are unconstitutional.

People vs. Eddy, 43 Cal. 331.

Choses in action are property subject to taxation even when secured by mortgage.

Lick vs. Austin, 43 Cal. 590.

Solvent debts are "property" within the meaning of that word as used in the constitution (of 1849), and are liable to taxation.

Savings and Loan Society vs. Austin, 46 Cal. 415; *People vs. Ashbury*, 46 Cal. 523.

Credits are not property in the sense in which the word "property" is used in section 13 of article XI of the constitution (of 1849), and can not be assessed for taxes, or taxed as property, even if secured by mortgage.

People vs. Hibernia Savings and Loan Soc., 51 Cal. 243; *Bank of Mendocino vs. Chalfant*, 51 Cal. 369.

NOTE.—Compare this case with *People vs. Eddy*, 43 Cal. 331, and *Savings and Loan Soc. vs. Austin*, 46 Cal. 415.

Between the bank and the depositor the ordinary relation of debtor and creditor does not exist.

People ex rel. Burke vs. Badlam, 57 Cal. 594.

NOTE.—In the case of *Pacific Coast Savings Soc. vs. San Francisco*, 133 Cal. 14, the court held directly the reverse. See, also, *Moore vs. Patch*, 12 Cal. 265; *People vs. Seymour*, 16 Cal. 332.

Credits have their *situs* at the domicile of the creditor, and are taxable at the place of his domicile, nor is the debt for purposes of taxation affected by the fact that it is secured by mortgage of property situate in another state.

Mackey vs. City and County of San Francisco, 113 Cal. 392.

Bank of Woodland vs. Pierce, 144 Cal. 434. See, also, *Crocker vs. Scott*, 149 Cal. 575, 584.

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The constitution of 1849 was understood and interpreted to be prohibitive of the taxation of all credits, including those secured by mortgage of property, on the grounds that the taxing of credits, secured or otherwise, was considered to be double taxation and contrary to the constitutional requirement that taxation should be equal and uniform.

Germania Trust Company vs. City and County of San Francisco, 128 Cal. 589; citing *People vs. Hibernia Bank*, 51 Cal. 243; *Bank of Mendocino vs. Chalfant*, 51 Cal. 369.

The general rule is that debts attend the person of the creditor, and are taxable at his domicile. The property to be assessed in such cases is money at interest or debts.

Estate of James G. Fair, 128 Cal. 607; citing *San Francisco vs. Lux*, 64 Cal.

481; *San Francisco vs. Mackey*, 113 Cal. 398; *People vs. Park*, 23 Cal. 138.

Solvent loans were within the constitutional definition of property subject to taxation, notwithstanding they are secured by pledge of property exempt from taxation.

Security Savings Bank vs. City and County of San Francisco, 132 Cal. 599; affirming *San Francisco vs. La Société, etc.*, 131 Cal. 612.

A balance of money account, held on general deposit in a New York bank, by an incorporated building and loan and savings society having its principal place of business in San Francisco, is taxable to such society in the city and county of San Francisco as a solvent credit.

Pacific Coast Savings Society vs. City and County of San Francisco, 133 Cal. 14; affirming *Estate of Fair*, 128 Cal. 607; and *Savings and Loan Society vs. San Francisco*, 131 Cal. 356.

The relation between a general depositor of money with a bank and the bank is that of debtor and creditor.

Pacific Coast Savings Society vs. City and County of San Francisco, 133 Cal. 14; citing *Mackey vs. San Francisco*, 113 Cal. 392.

NOTE.—In *People ex rel. Burke vs. Badlam*, 57 Cal. 594, it was held that such relation did not exist.

Checks or orders drawn upon the treasurer of the United States, payable on demand, as a mode of paying an obligation of the United States, are not exempt from taxation under the laws of the United States or under our state constitution, and are subject to taxation by state and municipal authorities as "solvent credits" of the holder.

Hibernia Savings and Loan Soc. vs. City and County of San Francisco, 139 Cal. 205.

National bank notes and United States notes and certificates payable on demand, are subject to taxation under the provisions of the act of congress of 1894 (2 Rev. Stats. Supp., p. 236—U. S. Comp. Stats. 1901, p. 2398).

Hibernia Savings and Loan Soc. vs. City and County of San Francisco, 139 Cal. 205, 210.

Solvent credits may be taxed by a city (or county) to the owner domiciled therein, though secured by a lien upon personal property situated and taxed elsewhere for full value.

Bank of Woodland vs. Pierce, 144 Cal. 434.

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The amount of the loans made by a savings and loan society, which are secured by stocks and bonds, were properly assessable to it as solvent credits.

Savings and Loan Society vs. City and County of San Francisco, 146 Cal. 673; citing *Savings and Loan Soc. vs. San Francisco*, 131 Cal. 356; *San Francisco vs. La Société Français*, 131 Cal. 612; *Security Savings Bank vs. San Francisco*, 132 Cal. 599.

Certain solvent credits of the plaintiff (the bank) were secured by liens on personal property. The assessor refused to make a reduction from such solvent credits of the amount of debts due from the bank to *bona fide* residents of the state. The question presented is whether the holder of solvent credits secured by collateral security on personal property is entitled to have his assessment upon such credits reduced by the amount of his indebtedness to *bona fide* residents of the state. *Held*, under the provisions of section 1 of article XIII of the constitution and of the provisions of the Political Code regulating the assessment of property for purposes of taxation, the holder of solvent credits secured by collateral security on personal property is entitled to have his assessment reduced by the amount of his indebtedness to *bona fide* residents of the state.

Bank of Willows vs. County of Glenn, 155 Cal. 352; citing *Bank of Woodland vs. Pierce*, 144 Cal. 434.

When a savings bank has been assessed as required by section 3617 of the Political Code, on account of all of its deposits, to the exclusion of its depositors, it is necessarily implied that the bank shall be subject to an assessment thereon while its deposits remain a part of its assets. When it has been so assessed, and afterward during the same year has invested its deposits in other securities, it can not be required to pay a tax on its debt to the depositors for money which it no longer owns. A savings bank, like any other corporation or natural person, in the contemplation of the law should be assessed but once on all of its property, and not both upon its property and also upon money invested therewith.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545;

Savings Bank of St. Helena vs. County of Napa, 17 Cal. App. 674. See, also, *Chesebrough vs. San Francisco*, 153 Cal. 559; *Canfield vs. Los Angeles County*, 157 Cal. 617; *Doheny vs. Los Angeles County*, 157 Cal. 624.

The law simply demands that a bank shall pay taxes only upon all of its property which is not exempt from taxation by virtue of the constitution itself.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545;

Savings Bank of St. Helena vs. County of Napa, 17 Cal. App. 674.

Where a mortgage upon land, which is properly assessed for the purpose of taxation as an interest in the land, is assigned as collateral security for a debt of the mortgagee, such debt is not assessable as a mortgage interest in the land. An assessment of it as such is invalid, and is not a mere immaterial mistake as to the owner of the real property, within the meaning of section 3628 of the Political Code.

Webster vs. Somer, 159 Cal. 459.

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The state may grant or refuse to grant a franchise to be a corporation upon such terms as it sees fit.

City Properties Co. vs. Jordan, 163 Cal. 587.

The mere right to collect wharfage and dockage for a certain term of years, is neither real estate nor personal property (under the revenue act of 1851), but a

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franchise, or incorporeal hereditament—an uncertain profit arising out of the realty.

De Witt vs. Hayes, 2 Cal. 463.

A franchise constituting a reversionary interest of a municipality is taxable.

Fall vs. The Mayor, etc., 19 Cal. 391.

Franchises, being sovereign prerogatives, belong to the political power of the state, and are primarily represented and granted by the legislature, as the head of the political power. Where the power of granting a franchise has been by legislative enactment delegated to subordinate tribunals, such tribunals are only agents of the legislature in this respect. The grant of a franchise by these subordinate tribunals is in effect a grant by them of a right of property to the grantee or licensee.

Fall vs. County of Sutter, 21 Cal. 237.

A franchise is in the nature of property; it is a vested right, a subject of purchase and enjoyment by all who are capable of purchasing, holding, or enjoying property.

California State Telegraph Co. vs. Alta Telegraph Co., 22 Cal. 398.

Public grants are to be strictly construed, and nothing passes to the grantee by implication. The grant of a franchise is not exclusive, unless it is expressly made so by the grant itself.

Bartram vs. Central Turnpike Co., 25 Cal. 283.

Grants of franchises and special privileges by the state to private persons or corporations are to be construed most strongly in favor of the public, and where the privilege claimed is doubtful nothing is to be taken by mere implication as against public rights.

Clark vs. City of Los Angeles, 160 Cal. 30.

Where a grant of such franchise by the state or some municipality thereof is not, by its terms, made an exclusive franchise, and the city in which it is to be exercised is not, by the law or ordinance granting it, forbidden or prevented from competing, the city may establish its own works for the same purpose and engage in the same public service within the city, although it may thereby injure or practically destroy the business of the holder of such franchise.

Clark vs. City of Los Angeles, 160 Cal. 30.

The condemnation of land in a street for the use of a railroad company, to enable it to lay and operate its track, gives it no title to the land condemned, nor any interest in it, except a mere easement in common with the general public.

Southern Pacific Railroad Co. vs. Reed, 41 Cal. 256.

A franchise obtained by grant from the legislature has the legal character of an estate or property.

Oakland Railroad Co. vs. Oakland, Brooklyn, etc., Co., 45 Cal. 365.

The state has no proprietary interest in the streets of a city dedicated to public use; and when it grants to a private corporation an easement over the streets, not common to the public at large, it merely grants, in its sovereign capacity, a franchise, and not any proprietary interest in the streets. As a general rule the fee of the streets in a city, dedicated to public use, is in the owners of the adjoining lands, on each side, to the center of the street.

City and County of San Francisco vs. Spring Valley Water Works, 48 Cal. 493.

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Under the act of 1903 for opening and widening of streets, there was properly included in the assessment of a street railroad its "franchise" whereby it was granted the right to construct, maintain and operate its railroad, along and over that portion of the street within the boundaries of the district, by which it acquired an interest in the soil of the street, consisting of the location of its road in the street, and the right to lay its rails therein, and attach them firmly to the soil, and to run its cars over them for profit, and to the exclusive use thereof for that purpose, which is an "interest in the land" and is "real estate."

Los Angeles Pacific Co. vs. Hubbard et al. 17 Cal. App. 646; citing *Appeal of the North Beach and Mission Railroad Co.*, 32 Cal. 499; *Stockton Gas and Electric Co. vs. San Joaquin County*, 148 Cal. 313.

A franchise conferred by the legislature on private persons, to construct a railroad track through the streets of a city, and to run cars thereon, is not a contract in such sense as to exempt the occupation of operating the road from proper police regulations, or from taxation by the municipal authorities in cases authorized by law.

City of San Jose vs. San Jose, etc., Railroad, 53 Cal. 475.

It is argued that a franchise for using the public streets, and laying gas and water pipes therein, has no value. But it must be admitted that the right of laying down and maintaining such pipes in the streets of a city, for conveying gas or water, is a *franchise*; and by our constitution, franchises are declared to be property for the purposes of taxation. Therefore, it does not rest with the owner or with the court to determine that such franchise has no value. In a pecuniary sense, the value of franchises may be as various as the objects for which they exist, and the methods by which they are employed, and may change with every moment of time; but that franchises are property, and are to be taxed in some method in proportion to value, is a part of the paramount law of this state. The method of assessment, and by whom, was to be and was provided for by law. The assessor, in the determination of the value of such franchise, had a right to take the aggregate market value of the shares of the capital stock of the corporation, held and owned by the shareholders, and from that aggregate deduct the combined aggregate value of all the taxable property of the corporation, including real estate, improvements thereon, personal property, money, and street mains, and assess the franchise at such difference.

San Jose Gas Co. vs. January, 57 Cal. 614.

The franchise of the Central Pacific Railroad Company is property subject to taxation; and is not exempt from taxation by reason of its being a means or instrumentality employed by congress to carry into operation the powers of the general government.

Central Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 35.

NOTE.—But see *People vs. Central Pacific Railroad Co.*, 105 Cal. 576.

An assessment upon property described as the "franchise of the Postal Telegraph-Cable Company in the city of Los Angeles," is to be deemed to refer solely to its state franchise in the streets of that city, and not to its federal non-taxable franchise under the act of congress of July 24, 1866, and is a sufficient description of the state franchise.

Postal Telegraph-Cable Co. vs. City of Los Angeles, 164 Cal. 156; citing *Western Union Telegraph Co. vs. Los Angeles*, 160 Cal. 124; *Postal Telegraph-Cable Co. vs. Los Angeles*, 160 Cal. 129.

The assessment of a gas and electric corporation on its "franchise per state law" embraces all franchises granted the corporation by the laws of the state,

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including the franchise acquired under the statute which provides for the organization of the corporation and the franchise granted it by the constitution to occupy city streets.

Los Angeles Gas and Electric Co. vs. County of Los Angeles, 21 Cal. App. 517.

Franchises are special privileges conferred by the government on individuals and which do not belong to the citizens of the country generally by common right. The very existence of a corporation as such is a franchise, and it exercises its franchise in every act which it performs as a corporation.

Spring Valley Water Works vs. Schottler, 62 Cal. 69; citing *San Francisco vs. Spring Valley Water Works*, 48 Cal. 493; *San Jose Gas Co. vs. January*, 57 Cal. 616.

It was the intention of those who framed and ratified the constitution to place franchises in the category of property to be taxed.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

There can be no doubt of the power of the state to tax the franchise at its assessed value. There may be more difficulty in arriving at the value of a franchise than of a parcel of land or personal chattels, but still it may be estimated, and such value may exceed the value of the tangible property of the corporation.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

The constitution having declared that franchises are property and that all property in the state not exempt from taxation shall be assessed in proportion to its value, to be ascertained as provided by law, it would seem to follow that the tax must be according to a valuation made by the officer appointed for that purpose. If the state can impose a tax on the franchise of a corporation in the nature of an excise or duty, it does not exclude the taxation by a valuation made by an assessor.

Spring Valley Water Works vs. Schottler, 62 Cal. 69; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *San Jose Gas Co. vs. January*, 57 Cal. 614.

The legislative intent to tax franchises was shown in the enactment of section 3608 and the repeal the same day of section 3640 of the Political Code.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

The mode of assessing and equalizing values of franchises, as set forth in *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, was affirmed in

San Francisco Gas Light Co. vs. Schottler, 62 Cal. 119.

The Western Union Telegraph Company, owning and operating telegraph lines by authority of the United States government, is one of the means or instruments employed by the United States government for carrying into effect its sovereign powers; and a tax upon its franchise, in addition to the taxes which in common with others it pays upon its property, is beyond the power of the state to levy, and is void.

City and County of San Francisco vs. Western Union Telegraph Co. 96 Cal. 140.

The right to be a corporation is a franchise, to acquire which the prescribed statutory conditions for the formation of the corporation must be substantially complied with.

People vs. Montecito Water Co., 97 Cal. 276; citing *People vs. Selfridge*, 52 Cal. 331.

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A water company, whose franchise has been assessed in the county where it has its principal place of business, can not be assessed as upon a "franchise" for a mere right of way in another county, through which a portion of its pipe and pipe line passes entirely unconnected with any privilege granted by such county to take tolls or collect water rates, or enjoy any other special prerogative. Such mere right of way is not a franchise.

Spring Valley Water Works vs. Barber, 99 Cal. 36.

The right of way of a railroad is in the nature of an easement, and is required only for the purpose of the railroad, and when the road is abandoned or removed from the strip of land over which the railroad has a right of way, the land is discharged of the burden, and the right of way no longer exists.

California and Nevada Railroad Co. vs. Mecartney, 104 Cal. 616.

A railroad company organized under the laws of California to construct and operate its railroad within the state, which has subsequently received from the United States a franchise to construct and operate a railroad from the Pacific ocean eastward, may be assessed upon its railroad franchise derived from the state, which is not merged in or destroyed by the franchise received from the federal government.

People vs. Central Pacific Railroad Co. 105 Cal. 576.

The assessment of a railroad franchise within the state properly susceptible of valuation by the state board of equalization must be presumed, in the absence of any other evidence than the assessment itself, to have been assessed upon property within the jurisdiction of the board, rather than upon property which it had no power to include in the assessment.

People vs. Central Pacific Railroad Co. 105 Cal. 576.

A ferry franchise is good, regardless of whether or not it can be enforced on the further side of the water course. The point of departure is the basis and home of the ferry, and the fact that one terminus is in another and foreign jurisdiction does not take it out of the jurisdiction of the authority which granted it. If the outer terminal is beyond the jurisdiction of the granting power, it may affect the value of the franchise, but not its legality.

Vallejo Ferry Co. vs. Solano Aquatic Club, 165 Cal. 255. See, also, *Vallejo Ferry Co. vs. Lang & McPherson et al.*, 161 Cal. 672.

The lease of land to a steamship company, including a wharf, operates as a grant to it of an estate in land, and not as a mere franchise.

Pacific Coast Steamship Co. vs. Kimball, 114 Cal. 414.

No valid franchise can be granted by the supervisors which conflicts with the general statutes.

People vs. Sutter Street Railway Co., 117 Cal. 604.

A complaint in an action to recover taxes paid under protest which shows an assessment upon a franchise granted by a city, and avers that plaintiff holds federal franchises which are not taxable, and is an instrument of the federal government, and that the assessment was void, but does not aver that the plaintiff did not receive a franchise granted by such city, does not state a cause of action. It can not be held as a matter of law that the city could not grant and that plaintiff could not receive a franchise which is different from and in addition to the franchises granted to it by the federal government.

Western Union Telegraph Co. vs. County of San Joaquin, 141 Cal. 264; distinguishing *San Francisco vs. Western Union Tel. Co.*, 96 Cal. 140.

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A franchise merely to be a corporation under the laws of this state is a valuable right, distinct from any other property or franchises owned by the corporation, which is the subject of taxation and assessment to the corporation itself by name, and not to its members, who do not hold the right to be a corporation severally as individuals, but only in their collective capacity as a body politic, by the name specified in their certificate of incorporation.

Bank of California vs. City and County of San Francisco, 142 Cal. 276; citing *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 106.

The franchise to be a corporation is "property," and the legislature has power to provide for its assessment as such; and the power of the state to impose such tax does not exclude the taxation thereof in a proper case by a valuation thereof as property by the assessors.

Bank of California vs. City and County of San Francisco, 142 Cal. 276; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 117.

A railroad company is a quasi-public corporation, in whose railroad the public is interested. It holds a franchise from the state, and its right of way can not be sold on execution or for a street assessment.

Southern California Railway Co. vs. Workman, 146 Cal. 80. But see, also, *Fox vs. Workman*, 155 Cal. 201.

The power given to the board of supervisors "to grant franchises for all lawful purposes, upon such terms and conditions as in their judgment may be necessary and proper and in such manner as to present the least possible obstruction and inconvenience to the traveling public," under the county government act of 1897, has in view such franchises as will aid the easement, and promote the public comfort and convenience in its use.

Gurnsey vs. Northern California Power Company, 160 Cal. 699.

It is held, that it may be conceded, without so deciding, that a franchise to an electric light company to erect its system over a highway for the purpose of furnishing power at a pumping plant erected thereon, for water to be used in sprinkling a highway, may be justified for the same reason that authorizes the franchise for lighting the highway.

Gurnsey vs. Northern California Power Company, 160 Cal. 699.

The general franchise can only protect the grantee thereof in the use of the easement; but it must be taken in subordination to the paramount rights of the one who owns the fee, and can not warrant any invasion of his rights without his consent, or without compensation.

Gurnsey vs. Northern California Power Company, 160 Cal. 699.

The franchise of a water company, exercised under section 19 of article XI of the constitution, of using the streets and thoroughfares of a municipality in laying down pipes and conduits therein, and supplying such city and its inhabitants with water, and charging rates therefor, can be assessed for taxation only in the county where it is locally situated.

City and County of San Francisco vs. Oakland Water Company et al., 148 Cal. 331; affirming *Stockton Gas, etc., Co. vs. San Joaquin County*, 148 Cal. 313.

The defendants, the Oakland Water Company and the Contra Costa Water Company, are corporations having their *principal place of business* in the city and county of San Francisco, but are engaged in supplying water in Oakland, Alameda County, and other places in that county. Their water mains, conduits, etc., are laid in the streets of Oakland, but none are so laid in said city and county of San

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Francisco. The San Francisco assessor assessed a "franchise" against the Oakland Water Company for \$500,000, and against the Contra Costa Water Company for \$750,000. *Held*, that the San Francisco assessor was authorized to assess their *corporate franchise only*, that is, their franchises "to be" corporations, while the franchises "to do"—to lay down pipes and use the streets—were assessable in Alameda County.

City and County of San Francisco vs. Oakland Water Company et al., 148 Cal. 331; affirming *Stockton Gas, etc., Co. vs. San Joaquin County*, 148 Cal. 313.

The franchises granted to the Western Union Telegraph Company by the act of congress of April 24, 1866, to construct, maintain, and operate its lines of telegraph over the public domain, etc., are not subject to state taxation, directly or indirectly, and a city has no right to assess and tax the same when exercised upon its streets.

Western Union Telegraph Co. vs. City of Visalia, 149 Cal. 774; affirming *San Francisco vs. Western Union, etc.*, 96 Cal. 140.

A city may, under its police power, pass an ordinance regulating the placing of telegraph poles and wires so as to prevent unreasonable obstruction to travel, but can not deprive the company of its right to construct and maintain them. An ordinance authorizing their construction and permitting them to remain where placed, in consideration of the telegraph company's written agreement to permit their use by the city for certain purposes, does not grant an effective municipal franchise having a real existence distinct from its federal franchise, which may be taxed by the city.

Western Union Telegraph Co. vs. City of Visalia, 149 Cal. 744; distinguishing *Western Union, etc., vs. San Joaquin County*, 141 Cal. 264.

The occupancy by an electric light and power company of certain of the public highways of a county by its transmission line, in pursuance of an ordinance of the county granting it a franchise to construct a line along such highways for the purpose of conducting and distributing electrical energy along said route, is assessable as a franchise, notwithstanding the company at the time of the assessment was not using the transmission line erected along that route for the purpose of collecting tolls.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; distinguishing *Spring Valley Water Works vs. Barber*, 99 Cal. 36.

In the absence of any fraud on the part of the assessor in the valuation of such franchise, the assessments of which in each school district purported to be upon the franchise used in that particular district, the fact that he valued the franchise in each district according to the number of miles of transmission line in that district, without reference to the extent of the public highways over which the lines were erected, does not render the assessments violative of section 10 of article XIII of the constitution, requiring property to be assessed in the district in which it is situated.

Kern River Company vs. County of Los Angeles, 164 Cal. 751.

Such franchise could not be assessed against the company in a school district in which no part of the public roads was used in the operation of its lines. Such an attempted assessment thereof is without the jurisdiction of the assessor to make, and can not be validated, or rendered conclusive, by the action of the county board of equalization in approving it.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; citing *Brenner vs. Los Angeles*, 160 Cal. 77.

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A city in granting a street railway franchise is but an agency of the state; and if there be any conflict between the ordinance containing the grant and the general laws of the state, the latter must govern.

Los Angeles Railway Co. vs. City of Los Angeles, 152 Cal. 242.

The interest in the street of a street railroad company authorized by statute to lay down a track in the streets of a city and run cars over it for the conveyance of passengers for hire, is an easement in the land; and the estate of such company in the street is real property.

Appeal of the North Beach and Mission Railroad, 32 Cal. 499.

The franchise of a corporation is sometimes classed as real estate—of the kind styled incorporeal hereditaments.

Spring Valley Water Works vs. Schottler, 62 Cal. 69, 110.

The franchise extended by section 19 of article XI of the constitution to a gas or electric company to lay pipes or conduits or erect poles in or along the streets of a city and supply the inhabitants of the city with artificial light is an incorporeal hereditament; it is real estate in the nature of an easement pertaining to the streets of the city in which it is exercisable, and is inseparably annexed to the soil of which the profit arises, and has a local situation in the place, and that place only, where the right is actually exercised, and under section 10 of article XIII of the constitution, can be assessed for purposes of taxation only in the county where it is situated.

Stockton Gas and Electric Co. vs. County of San Joaquin, 148 Cal. 313; affirming *San Francisco, etc., Railway vs. Scott*, 142 Cal. 229; *Spring Valley Water Works vs. Barber*, 99 Cal. 38; *Appeal of the North Beach, etc., Railroad*, 32 Cal. 512. See, also, *San Francisco vs. Oakland Water Co. et al.*, 148 Cal. 331.

The right to use the streets of a city as a way upon which to build and operate a street railroad is a right in real property, and incorporeal hereditament.

O'Sullivan vs. Griffith, 153 Cal. 502; citing *Stockton, etc., Co. vs. San Joaquin County*, 148 Cal. 319.

There is a distinction between a franchise, or grant of right, to engage in the business of furnishing electric current, and the narrower grant of a right to occupy the streets of the city in carrying on that business.

Oro Electric Corporation vs. Railroad Commission of California, 169 Cal. 466.

It is settled in this state that the corporate franchise of a corporation, the right to be and exist as a corporation, may constitute valuable property of the corporation within the meaning of the term "property" as used in section 1 of article XIII of the constitution, and that when it does constitute such valuable property, it is to be assessed and taxed "in proportion to its value" as any other property. The well settled theory of our system of taxation of corporations is that everything that gives value to the shares of stock of a corporation must be assessed as property of the corporation under this section of the constitution, and it is recognized that this corporate franchise constitutes one of such elements.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 110; *Bank of California vs. San Francisco*, 142 Cal. 276; *Crocker vs. Scott*, 149 Cal. 575.

A domestic corporation whose franchise "to be" a corporation has been assessed by taking the market value of its stock as such value was shown on the first Monday in March under normal conditions, is not relieved from the payment of the tax levied

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thereon from the fact that the franchises of other like corporations escaped like assessments, or is such a tax discriminatory against domestic corporations in that it is not levied against the franchise of foreign corporations.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204. See, also, *Western Union Oil Company vs. City of Los Angeles*, 161 Cal. 718.

The corporate franchise "to be" a corporation, is to be assessed at the principal place of business of the corporation, and as the principal place of business of a foreign corporation is without the state, its franchise "to be a corporation" can not be assessed herein.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204. See, also, *Western Union Oil Company vs. City of Los Angeles*, 161 Cal. 718.

It is held as proper to ascertain the value of the franchise, to take the aggregate market value of the shares of stock on a certain date and deduct therefrom the value of the real and personal property of the company, and the difference to be the value of the franchise. The market value of the shares of stock to be established by witnesses.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

A proper method for ascertaining the value of the franchise of a corporation "to be a corporation" is to deduct from the aggregate market value of its shares the value of its tangible property, taking the difference as the value of the franchise.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204;

Western Union Oil Company vs. County of Los Angeles, 161 Cal. 718; citing *Crocker vs. Scott*, 149 Cal. 575; *San Jose Gas Company vs. January*, 57 Cal. 614; *Spring Valley Water Works vs. Barber*, 99 Cal. 36; *Bank of California vs. San Francisco*, 142 Cal. 276.

The fact that the assessor made the assessment of the franchise of the banking corporation by deducting the tangible property of the corporation from the market value of its shares, and taking a fraction over twenty-five per cent of the difference as the value of the franchise, does not show an unjust valuation, nor include such elements as dividend or profit-earning power, or good will. The assessor had the right to take into consideration the value of shares in determining the value of the franchises. If he erred in his judgement, the remedy was by application to the board of equalization, and the court will not revise the valuation.

Bank of California vs. City and County of San Francisco, 142 Cal. 276; citing *San Jose Gas Co. vs. January*, 57 Cal. 614; *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Spring Valley Water Works vs. Barber*, 99 Cal. 36.

It is the settled law of this state that the proper method for ascertaining the value of the franchise of a corporation is by deducting from the aggregate market value of the shares the value of its tangible property, and taking the difference as the value of the franchise.

Crocker vs. Scott, 149 Cal. 575; affirming *San Jose Gas Co. vs. January*, 57 Cal. 614; *Spring Valley Water Works vs. Schottler*, 62 Cal. 69, 117; *Spring Valley Water Works vs. Barber*, 99 Cal. 36, 38; *Bank of California vs. San Francisco*, 142 Cal. 276, 287; *Stockton Gas, etc. Co. vs. San Joaquin County*, 148 Cal. 313.

All classes of property, corporeal and incorporeal, whether owned by natural or artificial persons, must bear their just and proper proportion of taxes. Under the constitution of this state, franchises must be classed as property subject to taxation.

San Joaquin and Kings River Canal and Irrigation Co. vs. County of Merced, 2 Cal. App. 593; citing *Spring Valley Water Works vs. Schottler*, 62 Cal. 108; *Stockton Gas, etc., Co. vs. San Joaquin County*, 148 Cal. 313; *Bank of California vs. San Francisco*, 142 Cal. 277.

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The creation of a corporation, the grant of power to exist as such, is, in itself, a franchise, which is assessable as property, and it must be assessed wherever the corporate entity has its domicile or residence, and this, in law is the place where its principal place of business is situated. The franchise is separate and distinct from other special franchises which the corporation may acquire and exercise, and each separate franchise may be assessed and taxed.

San Joaquin and Kings River Canal and Irrigation Co. vs. County of Merced, 2 Cal. App. 593; citing *Stockton Gas, etc. Co. vs. County of San Joaquin*, 148 Cal. 313; *Bank of California vs. San Francisco*, 142 Cal. 279; *Trezevant vs. Strong*, 102 Cal. 48; *Whitney vs. Sellers Com. Co.*, 130 Cal. 189.

The right owned by a corporation to maintain and operate canals for the conveyance of water for the purpose of irrigation and water power and for mining and manufacturing purposes, and to collect rates or compensation for the use of the water, is a franchise separate and distinct from the creative or corporative franchise, and is assessable as such; and the proper place for its assessment is in the county where the franchise is exercised; that is, where the water is distributed and the rates are collected.

San Joaquin and Kings River Canal and Irrigation Co. vs. County of Merced, 2 Cal. App. 593; citing *Spring Valley Water Works vs. Schottler*, 62 Cal. 108; *San Francisco vs. Spring Valley Water Works*, 48 Cal. 493; *San Jose Gas Co. vs. January*, 57 Cal. 116; *San Francisco vs. Oakland Water Co. et al.*, 148 Cal. 331; *Stockton, etc. Co. vs. San Joaquin County*, 148 Cal. 313; *San Benito vs. Southern Pacific R. R. Co.*, 77 Cal. 520; *San Luis Water Co. vs. Estrada*, 117 Cal. 177; *Conger vs. Weaver*, 6 Cal. 548; *Robinson vs. Southern Pacific R. R. Co.*, 105 Cal. 526.

The assessment of the property of a canal company, which after describing the canals, contained the following item: "franchise on above described canals, \$15,000," is a sufficient description of the special franchise to collect water rates in connection with the operation of the canals.

San Joaquin and Kings River Canal and Irrigation Co. vs. County of Merced, 2 Cal. App. 593; citing *San Francisco vs. Oakland Water Co. et al.*, 148 Cal. 331.

An ordinary railroad obtains its franchise by incorporation for the purpose of extending its line between its termini, and its right to use a street is no part of its franchise, but is a mere right of way constituting part of its roadway. But the right which a street railroad obtains from the city to lay its track and operate its road in its streets is the most valuable part of the franchise. It does not receive it from being incorporated but obtains it afterward by special grant from the municipality, which includes both the roadway and the franchise.

Huntington vs. Curry, 14 Cal. App. 468; citing *San Francisco, etc. Railway vs. Scott*, 142 Cal. 222; *Railroad Commissioners vs. Market St. Railway*, 132 Cal. 677; *Ferguson vs. Sherman*, 116 Cal. 169; *United Railroads, etc. vs. Colgan*, 153 Cal. 53.

A grant of a franchise to construct and operate a railroad or other utility in the street is to be strictly construed, and, in cases of a fair doubt, in favor of the public as against those claiming under the grant.

City of Sacramento vs. Pacific Gas and Electric Company, 173 Cal. 787.

A description of property assessed to a telegraph company as the "right to occupy the streets of the city of Los Angeles," without other words of description or identification, must be construed as limited to rights in the streets of Los Angeles derived by the telegraph company from the State of California and not covered by its federal franchise. Such description is not so imperfect as to invalidate the

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assessment. Moreover, it will not be assumed, in the absence of evidence, that the assessor included in such assessment, which in express terms includes the rights granted by the state, other property which he had no right or power to assess.

Western Union Telegraph Company vs. City of Los Angeles, 160 Cal. 124;

Postal Telegraph-Cable Company vs. County of Los Angeles, 160 Cal. 129; affirming *Western Union Telegraph Company vs. Hopkins*, 160 Cal. 106. See, also, *Postal Telegraph-Cable Company vs. City of Los Angeles*, 164 Cal. 156.

Where the taxpayer has two franchises, one taxable by the state and one not so taxable, an assessment simply of "franchise," without other words of description or identification, is not invalid for want of a proper description.

Western Union Telegraph Company vs. County of Los Angeles, 160 Cal. 124; citing *People vs. Central Pacific Railroad Company*, 105 Cal. 576; *Stockton Gas and Electric Company vs. County of San Joaquin*, 148 Cal. 313; *San Francisco vs. Oakland Water Company*, 148 Cal. 331; distinguishing *San Francisco vs. Western Union Telegraph Company*, 96 Cal. 140.

There is no statute of this state enacted prior to the construction of plaintiff's (Postal Telegraph-Cable Company) telegraph system in the city of Los Angeles in the year 1889 which impliedly repealed or suspended, so far as that city is concerned, the effect of section 536 of the Civil Code, granting to telegraph companies a state franchise to use public roads. Moreover, no provisions of the freeholders' charter of the city of Los Angeles, as is existed at the time of its approval on January 31, 1889, could impair the effect of said section, which was a general law.

Postal Telegraph-Cable Company vs. County of Los Angeles, 160 Cal. 129; citing *Davies vs. City of Los Angeles*, 86 Cal. 37; *Banaz vs. Smith*, 133 Cal. 102.

The right conferred upon telegraph companies, by the act of congress of July 24, 1866, to construct, maintain, and operate lines of telegraph "over and along any of the military or post roads of the United States which have been or may hereafter be declared such by act of congress," is not limited to such military and post roads as are upon the public domain, but extends to all in the United States, including those in the various states. Under such act, a telegraph company has such rights in regard to the streets of a municipality as are granted by the act in regard to military or post roads. Such rights constitute its federal franchise, which is not assessable for taxes by the state, county, or municipality.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106.

If the state grants to a telegraph company the right to exclusive possession of portions of its public highways without compensation, the company obtains thereby something not acquired by it under the act of congress. Such right so acquired by the company is a franchise granted by the state, having for the purpose of assessment a local *situs*, and being assessable in the particular city or county in which the streets so occupied are situated.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106.

Western Union Telegraph Company vs. County of Los Angeles, 160 Cal. 124;

Postal Telegraph-Cable Company vs. County of Los Angeles, 160 Cal. 129; citing *Stockton Gas and Electric Company vs. County of San Joaquin*, 148 Cal. 313; *Western Union Telegraph Company vs. Visalia*, 149 Cal. 744; *San Francisco vs. Western Union Telegraph Company*, 96 Cal. 140. See, also, *Postal Telegraph-Cable Company vs. City of Los Angeles*, 164 Cal. 156.

Where there is a valid law of the state purporting to grant such right to telegraph companies generally, the exclusive occupancy by a company of portions

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of public highways for the authorized purposes is an acceptance by it of the offered franchise.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106;
Postal Telegraph-Cable Company vs. City of Los Angeles, 164 Cal. 156.

Section 536 of the Civil Code, as it was originally adopted in 1872, authorizing telegraph companies to construct lines of telegraph along and upon any public road or highway, and to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, constituted a grant to telegraph companies or rights in regard to the streets of cities, in addition to the rights given by the act of congress, which to the extent that they were accepted and availed of by any company, constituted a franchise by the state and accepted by the company. This state franchise included the right to such exclusive occupation by the company of portions of the streets as is maintained for the purposes of its system, leaving nothing in that behalf to be granted by the municipality. So far as a telegraph company holds these rights, it holds them solely under and by virtue of that section of the Civil Code. The taxation of this franchise is in no way taxation of its federal franchise.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106;
Western Union Telegraph Company vs. County of Los Angeles, 160 Cal. 124;
Postal Telegraph-Cable Company vs. County of Los Angeles, 160 Cal. 129; citing *Western Union Telegraph Company vs. Visalia*, 149 Cal. 744. See, also, *Postal Telegraph-Cable Company vs. City of Los Angeles*, 164 Cal. 156.

Payments made by a gas company to a municipality of a certain percentage of its gross receipts, the legality of which the company denied but which the municipality claimed under a stipulation contained in the ordinance granting the company the privilege of using the city streets on the condition that such payments were annually made, are not rendered compulsory or other than voluntary, by the mere threat of the municipality, that if the payments were not made, it would institute a legal proceeding against the company for the forfeiture of the privilege granted by the ordinance.

Hanford Gas and Power Company vs. City of Hanford 163 Cal. 108.

The construction of a road upon the grant of a franchise to collect tolls is a dedication of the road to public use, subject only to the right to collect tolls. The road belongs to the public, and the only interest of the holder of the franchise is the right to collect tolls as a compensation for building the road, and there is no right to compensation when the right to take tolls has ceased by expiration of the term for which it was granted or by abandonment. The same rule applies to bridges, which are highways under section 2618 of the Political Code.

Gardella vs. County of Amador, 164 Cal. 555.

In an action to condemn land for a railroad depot, under section 1244 of the Code of Civil Procedure, it is unnecessary that the railroad company should have first obtained a franchise over the streets of the municipality wherein the land sought to be condemned is situated.

Vallejo and Northern Railroad Company vs. Home Savings Bank, 24 Cal. App. 166.

A toll-road franchise is "property" which may be transferred within the meaning of section 1044 of the Civil Code, and like any other species of property, in the absence of an express provision to that effect, it may be transferred by sale under execution in satisfaction of any judgment which might be obtained against the owner thereof.

The People ex rel. Spiers vs. Lawley, 17 Cal. App. 331.

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A toll-road franchise is real estate, which passes by deed and descends to heirs like any other property.

The People ex rel. Spiers vs. Lawley, 17 Cal. App. 331; citing *Powell vs. Maguire*, 43 Cal. 11; *Stockton Gas and Electric Company vs. San Joaquin County*, 148 Cal. 313; overruling *Monroe vs. Thomas*, 5 Cal. 470; *Thomas vs. Armstrong*, 7 Cal. 286; *Wood vs. Truckee Turnpike Company*, 24 Cal. 474; *People vs. Duncan*, 41 Cal. 507; *Gregory vs. Blanchard*, 98 Cal. 313.

A franchise in fee for a toll-road is "private property," within the meaning of section 1044 of the Civil Code, as much so as franchises authorizing the construction and maintenance of railroads, subject only to the restriction of governmental regulations of a public use.

The People ex rel. Spiers vs. Lawley, 17 Cal. App. 331.

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Improvements on public lands, the assessment must be upon the improvements *eo nomine* and not upon the land itself.

People vs. Morrisson, 22 Cal. 73; citing *Hall vs. Dowling*, 18 Cal. 621; distinguishing *State vs. Moore*, 12 Cal. 56.

An engine resting upon and fastened by bolts and nuts to timbers which are imbedded in the soil is a part of the realty. So, also, a steam boiler secured by trestle work imbedded in the soil and resting on and surrounded by mason work of stone and mortar built on the ground, is a part of the realty.

McKiernan vs. Hesse et al., 51 Cal. 594; citing *Collins vs. Bartlett*, 44 Cal. 371; *Pennybecker vs. McDougall*, 48 Cal. 160.

For the purpose of taxation, improvements erected by a lessee upon lands owned by and leased from a municipal corporation are regarded as the property of the lessee.

City and County of San Francisco vs. McGinn, 67 Cal. 110.

XX. Assessments. Migratory stock.

The act of the legislature of March 16, 1874, entitled "An act to regulate the assessment of migratory herds of live stock, and to provide for an equitable distribution of the taxes derived therefrom," is unconstitutional.

People vs. Townsend, 56 Cal. 633.

The statute of March 30, 1872, "concerning the assessment of animals," is not in conflict with the provisions of the Political Code respecting the assessment of personal property. Regardless of whether grazing stock were assessed under the act of 1872 or under the Political Code and constitution as personal property, they were only assessable in a county other than that of the residence of the owner when having a permanent *situs* therein. If grazing stock were *permanently* kept at the residence of the owner, and were *temporarily* grazing in another county on the first Monday in March, at noon, they were properly assessed at the owner's place of residence. The provisions of the Political Code and of the constitution, providing for the assessment of personal property in the county in which it is situated has reference to its *permanent situs*, as distinguished from the place of *temporary* sojourn or transit.

Rosasco vs. County of Tuolumne, 143 Cal. 430; citing *Oakland vs. Whipple*, 39 Cal. 112.

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Under the revenue act of 1857 mortgages, *as such*, are not taxable, but the *debt or money* may be taxed, even though the land given as security is also taxed.

Falkner, Bell & Co. vs. Hunt, 16 Cal. 167.

Under the revenue act of 1860 all personal property of a tangible character was properly taxable in the county where it was actually situated at the time of the commencement of the assessment; but choses in action, and property of an intangible character, such as debts secured by mortgage, notes and the like, were properly taxable in the county where the owner resides.

People vs. Park, 23 Cal. 138;

People vs. Eastman, 25 Cal. 601.

By the provisions of the revenue acts (1861-1864) it is the "money at interest," which is subject to taxation, and not the mortgage, *as such*.

People vs. Whartenby, 38 Cal. 461.

Under the revenue act of 1861-1864 it was held that, levying a tax upon money at interest, as well as upon the property mortgaged to secure it, does not present a case of double taxation as against the mortgagee.

People vs. Whartenby, 38 Cal. 461.

If land subject to a mortgage is taxed, and the debt secured by the mortgage is also taxed, and the tax on the debt is paid by the mortgagee, the mortgagor can not complain of double taxation. In assessing land for taxation, the assessor can not deduct from its value the amount due on mortgages by which it is incumbered, and call the remainder the assessed value.

Lick vs. Austin, 43 Cal. 590.

NOTE.—This decision is under the constitution of 1849.

An erroneous assessment of a mortgage already satisfied is not void. In such case (Political Code, section 3678), by operation of law the tax on the mortgagee's interest is valid only against the real estate, and payable by the owner of the land whose estate has been enlarged by the release of the mortgage lien.

McCoppin vs. McCartney, 60 Cal. 367.

Under section 4 of article XIII of the constitution, a mortgage upon real estate is assessable and taxable as an interest in the mortgaged premises. An assessment which describes the property assessed as consisting of a mortgage upon certain described real estate, being the mortgaged premises, is an assessment of such real estate, and not merely of the mortgage.

Doland vs. Mooney, 72 Cal. 34.

Real property subject to mortgage liens must be assessed in the manner prescribed by section 3650 of the Political Code, and the assessment of the interest of the mortgagor must be complete within itself, so as to show upon its face, without reference to the assessment of the mortgage, that the value of the mortgage interest is deducted from the value of the land, and the remainder must appear separately in the assessment to the mortgagor.

Knott vs. Peden, 84 Cal. 299. But see *Henne vs. Los Angeles County*, 129 Cal. 297, and *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530.

An assessment of taxes to a mortgagee of the mortgage interest in land, which describes the mortgaged land as divided by the owner into blocks and lots before the levy of the assessment, sufficiently describes the land, although the mortgage described the land as an entire tract in a specified section and township, where it appears that the blocks and lots assessed to the mortgagee constitute the

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identical land described in the mortgage, and no more, and that the assessment is in substantial conformity to the statute, and in proper form for the assessment of a mortgage interest in town lots.

San Gabriel Land and Water Co. vs. Witmer Bros. Co., 96 Cal. 623.

NOTE.—This case is distinguished in *McPike vs. Heaton*, 131 Cal. 109; *Henry vs. Garden City Bank*, 145 Cal. 54; affirmed in *Angus vs. Plum*, 121 Cal. 608, and partially overruled in *William Ede Co. vs. Heywood*, 153 Cal. 615.

Where a conventional rate of interest is agreed upon, a verbal agreement that if the mortgagor should pay the taxes and assessments on the mortgage a reduction should be allowed upon the agreed interest, is not in violation of the constitution of the state, and does not release defendant from his contract to pay the conventional interest specified in the note.

California State Bank vs. Webber, 110 Cal. 538; citing *Hewitt vs. Dean*, 91 Cal. 10; *Daw vs. Niles*, 104 Cal. 106; *Harrelson vs. Tomich*, 107 Cal. 627.

The value of a mortgage given to the regents of the state university should be deducted from the full value of the property mortgaged, and the right of the mortgagor to such deduction is not affected by the circumstance that the mortgage is not taxable, as being the property of the state.

People vs. Supervisors, 77 Cal. 136.

A mortgage held by the regents of the University of California on property, while exempt from taxation, should, nevertheless, be deducted from the value of the assessed property.

Henne vs. County of Los Angeles, 129 Cal. 297; affirming *People vs. Board of Supervisors*, 77 Cal. 136.

A provision in a mortgage attempting to authorize the mortgagee, in the event of a foreclosure, to include in the judgment the amount of taxes paid by him on his interest as mortgagee, falls within the penalty of section 5 of article XIII of the constitution, and prevents him from recovering either the taxes or any interest on the note to secure which the mortgage was given, but not the principal sum secured by the mortgage.

Garms vs. Jensen, 103 Cal. 374.

Where the security for a debt is of a kind of property exempt from taxation by law, the evidence of the indebtedness secured thereby is not, therefore, exempt from taxation.

Savings and Loan Society vs. City and County of San Francisco, 131 Cal. 356.

A provision in the mortgage that the mortgagee "may pay all taxes, liens, or assessments upon the said property, and the same shall be repaid with interest thereon at the rate of one per cent per month," does not violate the constitution. It does not show a contract by which the mortgagor is obligated to pay any taxes upon the money loaned, or on any mortgage, deed of trust, or other lien.

Bank of Ukiah vs. Reed, 131 Cal. 597.

Where a mortgage provides for interest of one per cent per month, but the mortgagee, by a separate instrument, agrees that he will only exact interest amounting to eight per cent per annum and agrees to refund all interest paid over and above this amount after he has paid out of said one per cent per month the mortgage tax, the two instruments must be construed together, and so construed, they were an agreement for eight per cent per annum interest, with the mortgagors paying the tax; and under section 5 of article XIII of the constitution, such contract is

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void, the mortgagee can not recover the unpaid interest, and the mortgagors are entitled to a credit for the interest paid by them upon security.

Matthews vs. Omerd, 134 Cal. 84; affirmed in *Matthews vs. Omerd*, 140 Cal. 578.

Where a first mortgagee of property, after he has foreclosed his mortgage, cut off all rights of a second mortgagee in the premises and obtained a deed on the foreclosure sale to himself, pays to the state taxes for which the second mortgagee's interest in the property had been sold to the state, he can not maintain an action against the second mortgagee to recover the money thus expended.

Canadian and American Mortgage and Trust Co. vs. Boas, 136 Cal. 419.

See, also, *San Gabriel, etc., Co. vs. Witmer*, 96 Cal. 623; *Angus vs. Plum*, 121 Cal. 608; *McPike vs. Heaton*, 131 Cal. 109; *Henry vs. Garden City Bank*, 145 Cal. 54.

An executed oral agreement between the deceased and the original mortgagee by which the latter agreed to reduce the interest from ten per cent to seven per cent in consideration of the mortgagee's paying all the taxes on the mortgaged premises is valid so far as it is performed, but where the estate is insolvent, the law reduces the interest to seven per cent and there is, therefore, no benefit accruing to the estate, and the administratrix, who holds the mortgage, could not be permitted to profit personally by the arrangement, and evidence of the oral contract is, therefore, properly excluded.

Matter of the Estate of McDougald, 146 Cal. 191.

Section 4 of article XIII of the constitution (relative to assessment of mortgages) is to be construed as having reference only to taxation in the case of *liens upon land*, and does not apply to personal property.

Bank of Woodland vs. Pierce, 144 Cal. 434. See, also, *Bank of Willows vs. County of Glenn*, 155 Cal. 352.

A mortgagee of real property who purchases the property upon foreclosure, can not recover from a second mortgagee taxes which were levied upon the second mortgage debt prior to the foreclosure sale, and which the purchaser was compelled to pay to redeem the property from a sale to the state. There is no personal obligation on the second mortgagee to pay the taxes, and payment could be enforced only by a sale of the property.

Henry vs. Garden City Bank and Trust Co. of San Jose, 145 Cal. 54; affirming *Canadian, etc., Co. vs. Boas*, 136 Cal. 419; distinguishing *San Gabriel, etc., Co. vs. Witmer*, 96 Cal. 623; *Angus vs. Plum*, 121 Cal. 608; *McPike vs. Heaton*, 131 Cal. 109.

The assessment of mortgaged land to the owner for subsequent years (after a sale to the state for delinquent taxes), without regard to the mortgage liens, is not void; but the error of the assessor is simply that of assessing real property to the wrong person, which does not render the assessment invalid, and penalties must be paid thereon for the purpose of redemption of land previously sold for taxes.

Palomares Land Co. vs. County of Los Angeles, 146 Cal. 530; affirming *Henne vs. Los Angeles County*, 129 Cal. 297; overruling *Knott vs. Peden*, 84 Cal. 299.

Where the assessment of a large tract of mortgaged lands properly made against the mortgagor by government subdivisions, as required by sections 3628 and 3650 of the Political Code, shows a valuation of such property by such legal subdivisions, and a deduction, on account of the mortgage, from the valuation of each parcel, the mortgagee, whose interest in such lands was assessed in a lump sum, aggregating the total of such deductions, without any apportionment among the sections composing the mortgaged property, can not maintain an action to restrain the execution of a tax deed based upon the assessment of the mortgage interest, without tender of the

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amount of the tax assessed thereon. If the mortgagee had desired to free any specific sections of the land from the lien of the tax, it could have offered to pay the tax properly chargeable to those sections. Such offer, even if refused, would have put the mortgagee in a position to ask and receive the aid of a court of equity. If it never had the intention or desire to pay the tax as to any part of the land less than the whole, the failure to assess the mortgage interest by subdivisions did not affect its obligation to pay the entire tax.

Savings and Loan Soc. vs. Burke, 151 Cal. 616.

Are the provisions of the Political Code relative to assessing land by sections, townships, etc., applicable to the assessment of mortgage interests? Question not decided.

Savings and Loan Soc. vs. Burke, 151 Cal. 616.

A purchaser of real property, which was subject to a lien for unpaid taxes assessed on the interest of a mortgagee thereof under a mortgage executed by his grantor, who subsequently pays the tax for the purpose of releasing the land from the lien, can not recover the amount so paid from such mortgagee, as there was no contractual relation existing between them.

William Ede Co. vs. Heywood, 153 Cal. 615; affirming *McPike vs. Heaton*, 131 Cal. 109; overruling in part *San Gabriel, etc., Co. vs. Witmer*, 96 Cal. 623, and *Angus vs. Plum*, 121 Cal. 608; citing *Canadian, etc., Co. vs. Boas*, 136 Cal. 419; *Henry vs. Garden City Bank, etc.*, 145 Cal. 54.

Section 4 of article XIII of the constitution, providing that "a mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby," has exclusive reference to mortgages, deeds of trust, contracts, or other obligations affecting realty.

Bank of Willows vs. County of Glenn, 155 Cal. 352; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; affirming *Bank of Woodland vs. Pierce*, 144 Cal. 434.

Contracts of security on personal property are not "mortgages or trust deeds," within the meaning of those words as used in the excepting clause of section 1 of article XIII of the constitution, declaring that "the legislature may provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state."

Bank of Willows vs. County of Glenn, 155 Cal. 352; citing *Bank of Woodland vs. Pierce*, 144 Cal. 434.

Section 5 of article XIII of the constitution, providing for the forfeiture of interest, when "a debtor is obligated to pay any tax or assessment on money loaned on any mortgage, deed of trust, or other lien," has no application to a contract by a purchaser under a contract of sale to pay taxes on the land; nor does it refer to a possible equity of the purchaser for purchase money paid, which could arise, if at all, only when the vendor is in default.

Vance Redwood Lumber Co. vs. Durphy, 8 Cal. App. 664; citing *Odd Fellows' Savings Bank vs. Brander*, 124 Cal. 255; distinguishing *Avery vs. Clark*, 87 Cal. 619; *Gessner vs. Palmateer*, 89 Cal. 89; *Kent vs. Williams*, 114 Cal. 537.

The error relied upon concerned the action of the court in refusing to allow credit upon the amount found due (under foreclosure of mortgage) because of taxes assessed against the property mortgage. The taxes were not assessed against the mortgage or the mortgagee's interest. The whole tax was levied against the property mortgaged without any deductions on account of the mortgage. The mortgage was not assessed at all. In such a case it has been decided that the

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owner is not entitled to deduct any such tax from the mortgage debt. It is only the tax "levied upon the security" that the owner may pay and have the amount deducted from the amount of the security (constitution, article XIII, section 4); and as there was no assessment of the security, the defendant was not authorized to have this payment deducted.

John Brickell Company vs. Sutro et al., 11 Cal. App. 460; citing *Hibernia S. and L. Soc. vs. Behnke*, 121 Cal. 339.

In an action for foreclosure of mortgage, after the statute of limitation had run against the note, it was claimed that the acknowledgment to the county assessor of the mortgage for the purpose of assessment to relieve the defendant of a portion of his taxes, "is sufficiently connected with the mortgagee to allow him to rely upon it as a waiver of the statute." Held, that the claim was without merit.

President and Board of Trustees of California College vs. Stephens, 11 Cal. App. 523.

Moneys advanced by the mortgagee to one of the mortgagors, at the request of the latter, for the express purpose of paying taxes and assessments on the mortgaged premises, and so applied by such mortgagor, are recoverable in an action to foreclose the mortgage, under a provision thereof authorizing the inclusion in such action of "all payments made by the mortgagee for taxes and assessments." In so applying the moneys advanced, the mortgagor acted as the agent of the mortgagee in paying the taxes and assessments.

Phillips vs. Phillips, 163 Cal. 530.

Where a mortgage upon land, which is properly assessed for the purpose of taxation as an interest in the land, is assigned as collateral security for a debt of the mortgagee, such debt is not assessable as a mortgage interest in the land. An assessment of it as such is invalid, and is not a mere immaterial mistake as to the owner of the real property, within the meaning of section 3628 of the Political Code.

Webster vs. Somer, 159 Cal. 459.

An assessment of a mortgage on real property can not be in excess of its face value, and a tax sale based upon such an excessive valuation is invalid.

Webster vs. Somer, 159 Cal. 459.

In the absence of any request for a statement of his taxable property, a mortgagor of real property has the right to assume that the assessor, in assessing the mortgaged property for the purpose of taxation, had properly performed his official duty and had deducted the value of the recorded mortgage from the assessed value of the property.

Brenner vs. City of Los Angeles, 160 Cal. 72.

A mortgage of land, executed to the regents of the University of California, to secure money due said body for any purpose for which it was created, and the interest which it thereby, for the purpose of taxation, holds in the land, is the property of the state, within the meaning of section 1 of article XIII of the constitution, exempting state property from taxation, and as such the said interest is exempt from taxation.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *Hollister vs. Sherman*, 63 Cal. 38; *People vs. Board of Supervisors*, 77 Cal. 137; *Henne vs. Los Angeles County*, 129 Cal. 298.

The mortgage interest belonging to the regents of the University of California being thus free from taxation, it follows that the lien of the tax assessments, made upon the interest of the mortgagor alone, did not extend to or include the interest vested in the state by virtue of the mortgage to the regents, and the tax sales and

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deeds, made in pursuance of such assessments, were confined to the interest of the mortgagor, and did not operate to transfer or convey the exempt interest of the state represented by the mortgage.

Webster vs. Board of Regents of the University of California, 163 Cal. 705.

The rule that a tax lien is paramount and prior to a mortgage lien must give way when the mortgage lien is exempt from taxation because the mortgage is the property of the state.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *California Loan and Trust Co. vs. Weis*, 118 Cal. 489.

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The principle upon which the business of a corporation created by the federal government as an agent in the execution of its powers, is exempt from taxation, does not apply to the real property of the corporation lying within the state.

People vs. Central Pacific R. R. Co., 43 Cal. 398.

A railroad corporation organized under the laws of the state can not claim exemption of its property within the state, because the corporation has been subsequently adopted by the federal government and employed in its services.

People vs. Central Pacific R. R. Co., 43 Cal. 398.

NOTE.—The foregoing would, of course, have no reference to a *franchise* granted by the federal government.

The state has authority to impose taxation upon the Central Pacific railroad line, and the telegraph line in connection therewith, lying within its limits.

People vs. Central Pacific R. R. Co., 43 Cal. 398.

Boards of supervisors of the several counties through which run railroads operated in more than one county have no jurisdiction to raise or lower the assessments placed upon the property of such roads by the state board of equalization.

People vs. Supervisors of Sacramento County, 59 Cal. 321.

The provision of section 10 of article XIII of the constitution, that the property of railroads operated in more than one county in the state shall be assessed by the state board of equalization, is clearly self-executing, and the power thus conferred may be exercised without the aid of any statute.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The provisions of section 10 of article XIII of the constitution of the state, relative to assessment of railroads by the state board of equalization, is not in conflict with the fourteenth amendment to the federal constitution that "no state shall deny to any person the equal protection of the laws." The fact that the value of one kind of property is to be ascertained by one officer or board, and the value of another by another—each clothed with the duty and responsibility of ascertaining the *actual* value—does not operate to deprive the owners of either kind of property of legal protection.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The sworn statement required of the president of a railroad corporation by section 3664 of the Political Code, is not binding upon the board, and may be disregarded by it in the assessment.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

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A description of the "roadway" by giving the termini courses and distances, is sufficient. *The law fixes the width.*

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

It is not necessary in the present case to decide whether section 10 of article XIII of the constitution intends to make the assessment by the state board of equalization of railroad property the assessment upon which the taxes in cities, etc., on such property shall be collected for local purposes. Even if sections 3664 and 3665 of the Political Code were of no effect so far as they make their assessment the basis of city and town taxation, the assessment involved in this case would be valid for other purposes.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The Political Code, section 3692, provides that the state board of equalization shall assess railroad property, annually, on or before the first Monday in March. The order of assessment thus made need not declare the particular fiscal year or years to which it is applicable.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

In this case the order assesses separately the franchise, roadway, roadbed, rails, and rolling stock, and it is therefore unnecessary to determine whether it was obligatory on the board to do so.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The constitution does not in terms require that the assessed value of each item should be separately apportioned, and that the Political Code does not contemplate such separate distribution is sufficiently apparent from section 3650.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The constitution does not require the apportionment to cities and towns and to counties shall be one act.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12.

The *roadbed* is the foundation on which the superstructure of a roadway rests: the *roadway* is the right of way—which is property liable to taxation; the rails in place constitute the superstructure. An assessment of these items separately does not constitute double taxation.

San Francisco and North Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 12; citing *Appeal of the North Beach, etc., Railroad*, 32 Cal. 499.

Under the constitution of this state, the property of railroad and other quasi-public corporations is subject to assessment and taxation, without deduction of the amount of any mortgage or like lien thereon.

Central Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 35.

The provision of the state constitution, that in the assessment of a railroad, no mortgage deduction is permitted, is not in conflict with the fourteenth amendment to the federal constitution that "no state shall deny to any person within its jurisdiction the equal protection of the laws," as such provision applies only to natural persons, and does not apply to corporations, or artificial persons.

Central Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 35.

NOTE.—Later decisions of the courts hold directly the reverse of the above.

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The franchise of the Central Pacific Railroad Company is property subject to taxation; and is not exempt from taxation by reason of its being a means or instrumentality employed by congress to carry into operation the powers of the general government.

Central Pacific Railroad Co. vs. State Board of Equalization, 60 Cal. 35.

NOTE.—The above refers to the *state* franchise and not the *federal* franchise.

The *roadbed* of a railroad, referred to in the constitution, is the bed or foundation on which the superstructure of the railroad rests. The *roadway* has a more extended signification as applied to railroads. In addition to that part denominated roadbed, the roadway includes whatever space of ground the company is allowed by law in which to construct its roadbed and lay its track. Such space is defined in subdivision 4 of the seventeenth and twentieth sections of the act approved May 20, 1861 (Statutes 1861, p. 607).

City and County of San Francisco vs. Central Pacific Railroad Co., 63 Cal. 467; citing *San Francisco, etc., Railroad Co. vs. State Board*, 60 Cal. 12.

The steamers used by railroads in transporting freight and passengers across the bay of San Francisco are not property assessable by the state board of equalization.

City and County of San Francisco vs. Central Pacific Railroad Co., 63 Cal. 467.

In an action to recover delinquent taxes, brought under section 3670 of the Political Code against a railroad company operated in more than one county, a judgment in favor of the plaintiff should not include interest on the taxes at the rate of two per cent per month from the time of delinquency. Section 3803 of the Political Code (repealed in 1895) providing for the recovery of such interest, only applies to taxes mentioned in the sections immediately preceding it.

People vs. North Pacific Coast Railroad Co., 68 Cal. 551.

The scheme for the assessment, levy and collection of taxes on railroads situated in more than one county, prescribed by sections 3665 to 3670 of the Political Code, is unconstitutional, as being special legislation not authorized by section 25 of article IV of the constitution.

People vs. Central Pacific Railroad Co., 83 Cal. 393.

NOTE.—The above was overruled in *People vs. C. P. P. R. Co.*, 105 Cal. 576, and *City of San Diego vs. S. P. R. R. Co.*, 108 Cal. 46.

It is not enough in a complaint to aver indebtedness for taxes, but the complaint must show that the taxes were levied upon the property, and when, and where, and by whom the levy was made; that the taxes were based upon the assessment averred, and are delinquent and unpaid; and must show how and when the defendant became indebted for taxes, and how and when the five per cent demanded was added to the amount.

People vs. Central Pacific Railroad Co., 83 Cal. 393.

A complaint for taxes must not only aver the fact of the assessment of property to the defendant, but must show that the defendant is the owner of the property, and that it was situated within the jurisdiction of the person or board making the assessment, and is within the jurisdiction of the court.

People vs. Central Pacific Railroad Co., 83 Cal. 393.

A complaint for taxes must show the authority of the state board of equalization to make and apportion the assessment of railroad property, and show what part

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of the property assessed is situated in the county to which the apportionment was made.

People vs. Central Pacific Railroad Co., 83 Cal. 393. But see *People vs. C. P. R. R Co.*, 105 Cal. 576; *County of San Diego vs. S. P. R. R. Co.*, 108 Cal. 46.

A complaint to recover taxes must show upon its face a *prima facie* case of a valid tax assessed and levied, and that it is delinquent. The statute waiving informality in the assessment does not excuse the total want of assessment, which can not exist without a description showing the general character and *situs* of the property. The statute nowhere waives informality in the levy of the tax. There is no tax until one is levied, and a complaint for taxes shows no indebtedness without averring the levy.

People vs. Central Pacific Railroad Co., 83 Cal. 393.

A complaint in an action by the state to recover taxes levied upon a railroad can not properly join causes of action in favor of the several counties through which the road passes. Several causes of action, when properly joined, must be separately stated, and must all belong to one class, and affect all the parties to the action.

People vs. Central Pacific Railroad Co., 83 Cal. 393.

An assessment of land claimed and occupied by a railroad company as a right of way, together with the track and all substructures and superstructures which support the same, without any separate assessment of the land and improvements, as required by section 2 of article XIII of the constitution, is void. The constitution provides a mode in which the state board of equalization shall fix its valuation of railroads, and must be construed, in so far as it differs from the general rule, in allowing the roadway, roadbed, and rolling stock to be valued together, as an authorized exception.

California and Nevada Railroad Co. vs. Mecartney, 104 Cal. 616; citing *San Francisco, etc., Railroad Co. vs. State Board*, 60 Cal. 12.

A railroad company organized under the laws of the State of California to construct and operate its railroad within the state, which has subsequently received from the United States a franchise to construct and operate a railroad from the Pacific ocean eastward, may be assessed upon its franchise derived from the state, which is not merged in or destroyed by the franchise received from the federal government. The assessment of a railroad franchise within the state properly susceptible of valuation by the state board of equalization must be presumed, in the absence of any other evidence than the assessment itself, to have been assessed upon property within the jurisdiction of the board, rather than upon the property which it had no power to include in the assessment.

People vs. Central Pacific Railroad Co., 105 Cal. 576.

Sections 3668 to 3670 of the Political Code, which provide for the assessment and collection of taxes upon a certain class of railroads, are not unconstitutional as contravening the provisions of subdivision 10 of section 25 of article IV of the constitution, prohibiting the passage of a special law for the collection of taxes. A law which operates only upon a class of individuals is none the less a general law if the individuals to whom it is applicable constitute a class covered by the general law, and which is germane to the purpose of the law. For the purpose of collecting delinquent taxes, railroads operated in more than one county constitute a class distinct from all other railroads, as well as from all taxpayers, and the classification thereof, for the purpose of assessment and collection of taxes is constitutional and valid.

People vs. Central Pacific Railroad Co., 105 Cal. 576; overruling *People vs. C. P. R. R. Co.*, 83 Cal. 393.

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Where the railroad company furnished to the state board of equalization a statement signed by its secretary, in which it stated the value of its franchise and roadway within the state, it must be held that the franchise included in the statement was the one capable of assessment, and the railroad company ought not to be permitted to say that a federal franchise was intended by it, or was included in the assessment, but the statement is admissible in evidence to show that the assessment was made in accordance with the statement furnished by the railroad company to the state board.

People vs. Central Pacific Railroad Co., 105 Cal. 576; citing *San Francisco vs. Flood*, 64 Cal. 504; *Lake County vs. Sulphur Bank, etc., Mining Co.*, 68 Cal. 14; *Dear vs. Varnum*, 80 Cal. 86.

Conversations between the members of the state board of equalization during the session in which the railroad assessment was made are not admissible to show the intention of the board, or of any of its members, or the significance to be given to the term "franchise" used in the assessment made by the state board.

People vs. Central Pacific Railroad Co., 105 Cal. 576.

In an action for the collection of delinquent taxes due the state, the court is authorized to include in the judgment such sum for fees of counsel employed by the controller as may be determined to be reasonable and just; but no allowance can be made for counsel fees of an assistant engaged by the attorney general.

People vs. Central Pacific Railroad Co., 105 Cal. 576.

Under section 3670 of the Political Code, all actions for the collection of delinquent taxes, including county, and city and county taxes upon railroads operated in more than one county of the state, assessed by the state board of equalization, must be brought by the controller in the name of the people of the State of California; and an action brought in the name of a county to collect the amount apportioned to the county, of the taxes assessed by the state board of equalization against the franchise, roadbed, rails, and rolling stock of a railroad operated in more than one county is subject to a demurrer upon the ground that the plaintiff is not authorized to maintain the action.

County of San Diego vs. Southern Pacific Railroad Company, 108 Cal. 46.

The act of 1883, amending certain sections of the Political Code, and adding new sections thereto, provides a complete and comprehensive scheme or system for the assessment and collection of taxes on the franchises, roadbeds, rails, and rolling stock of railroads operated in more than one county of the state, and being wholly inconsistent with the provisions of the act of April 23, 1880, which authorized suit in the name of the county, its effect was to supersede or repeal the latter act, in so far as it affects actions to recover taxes upon such railroads; and the remedy by suit in the name of the state, provided in the act of 1883, is specific, and must be held to be exclusive of all others.

County of San Diego vs. Southern Pacific Railroad Company, 108 Cal. 46.

NOTE.—This case accords with *People vs. Central Pacific Railroad Co.*, 105 Cal. 576, and overrules *People vs. Central Pacific Railroad Co.*, 83 Cal. 393.

Section 3664 to 3669 of the Political Code, providing for the assessment of taxes upon railroads by the state board of equalization and for the apportionment of county taxes thereon to the respective counties traversed by each railroad assessed, are constitutional and valid.

County of Colusa vs. County of Glenn, 124 Cal. 498; affirming *People vs. Central Pacific Railroad Co.*, 105 Cal. 576, and overruling *People vs. Central Pacific Railroad Co.*, 83 Cal. 393. See, also, *Colusa County vs. Glenn County*, 117 Cal. 434.

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It is the duty of the state board of equalization, in making a reassessment of railroad taxes, to take the place of an invalid assessment of a previous year, to make their apportionment to the counties as they existed at the time of the invalid assessment, and not at the time of the reassessment.

County of San Diego vs. County of Riverside, 125 Cal. 495.

The lien for the taxes justly leviable upon the property of a railroad company attaches on the first Monday of March in each year, and is not created by the assessment, which is merely one of the steps for the enforcement of the lien; and whenever a valid assessment or reassessment is made for that year, the taxes become payable to the county in which the roadbed was included when the lien attached for the taxes of that year.

County of San Diego vs. County of Riverside, 125 Cal. 495.

A county has no authority to collect by suit taxes upon a railroad operated in more than one county, which are due to a school district through which the railroad passes.

County of San Bernardino vs. Southern Pacific Railroad Co., 137 Cal. 659.

Section 10 of article XIII of the constitution, providing for the assessment of "railroads" operated in more than one county, by the state board of equalization, is not to be construed as including "street railroads," though operating in more than one county.

San Francisco and San Mateo Electric Railway Company vs. Scott, 142 Cal. 222.

"Railroads" operate under one general franchise obtained by compliance with the general railroad law, for purposes of general transportation, without any advantage of local traffic along the streets, and may be justly assessed and apportioned for taxes according to mileage. But "street railroads" are organized solely for the accommodation of local passenger traffic, and the franchises of a street railroad, operating as such in more than one county, are necessarily separate and distinct, and local in origin, situation, and character; and it would be an unjust discrimination against a city in which its franchise for a street railroad has much greater value than in the county, in going to a local village terminus in another county, to assess it only according to mileage.

San Francisco and San Mateo Electric Railway Company vs. Scott, 142 Cal. 222.

The assessment of a portion of a street railroad which operates in the city and county of San Francisco, and also in the county of San Mateo, of that portion of its property which lies in such city and county, together with its franchise to operate a street railroad therein, may be properly made by the assessor of the city and county.

San Francisco and San Mateo Electric Railway Company vs. Scott, 142 Cal. 222.

A part of the right of way of a railroad company abutting upon a public street in a city is not liable for a street assessment for street improvements fronting thereon, and the railroad company may enjoin the sale thereof for nonpayment of such assessment. The question whether a valid and effective assessment may be made to the owner of the fee, subject to the easement of the railroad right of way, is immaterial in such injunction suit, and will not be decided. The injunction is not injurious to a sale of the subordinate fee.

Southern California Railway Company vs. Workman, 146 Cal. 80. See, also, *Fox vs. Workman*, 155 Cal. 201.

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The fact that the land assessed by the reclamation district is part of the right of way of a railroad which the law does not authorize to be sold for a special assessment does not warrant the court in allowing the ordinary remedy of an action at law for the recovery of a personal judgment for the delinquent assessment, as the state is the sole judge of the remedies it will afford to the district to raise money with which to make improvements.

Atchison, Topeka and Santa Fe Railway vs. Reclamation Dist. No. 404,
173 Cal. 91.

Upon the condemnation of land for a right of way for a railroad, under the law of this state, the railroad company is only entitled to condemn an easement over the land, consisting of the exclusive right to use the surface for railroad purposes, leaving the fee in the owner of the land.

Southern Pacific Railroad Company vs. San Francisco Savings Union, 146 Cal. 290.

Under section 10 of article XIII of the constitution, it is only "the franchise, roadway, roadbed, rails and rolling stock" of railroads that are to be assessed by the state board of equalization, and any attempted assessment of railroad property beyond the power of such board is void and can not preclude an assessment by the local authorities. All improvements, whether situated on or off the right of way, are to be assessed by the local authorities. Railroad property within the city limits, consisting of blocks of land adjoining the right of way, acquired and used for station purposes, for a passenger depot, for a freight house, with spur tracks and sidings, for a roundhouse, for machine shops, for a storhouse, with material for construction purposes, with tracks for switching and repairing purposes, for a water tank, and for a cattle yard, and also a right of way and roadbed never used or operated for railroad purposes, are to be assessed exclusively by the local assessors.

San Francisco and San Joaquin Valley Railway Company vs. City of Stockton, 149 Cal. 83; affirming *People vs. Supervisors of Sacramento County,* 59 Cal. 321; *San Francisco, etc., Railroad Co. vs. State Board,* 60 Cal. 12, 29; *San Francisco vs. Central Pacific R. R. Co.,* 63 Cal. 467; *San Francisco and San Mateo Railway vs. Scott,* 142 Cal. 222.

Whether or not the property of a railroad is to be assessed locally or by the state board is in no way dependent upon the question as to whether it is essential to the operation of the railroad. It has been the legislative construction of the constitution, approved by the courts, that all improvements of a railroad, erected upon the space covered by the right of way, other than roadbed, rails, and rolling stock, together with all other tangible property outside of such "right of way" (which term is held to be synonymous with the term "roadway" used in the constitution), must be assessed by the assessor of the district where situated, in the same manner as other property.

San Francisco and San Joaquin Valley Railway Company vs. City of Stockton, 149 Cal. 83; affirming *San Francisco vs. Central Pacific R. R. Co.,* 63 Cal. 467; *San Francisco and San Mateo Railway Co. vs. Scott,* 142 Cal. 222.

A franchise has no local *situs*, but pertains to the whole road. "Rolling stock" has no actual *situs*. Such property is in no sense "local property." The term "roadbed" includes only the bed or foundation on which the superstructure of the railroad rests; and the term "rails" necessarily means simply the rails in place on the roadbed, constituting such superstructure. The "roadway" includes simply the continuous strip of land, within which the railroad is constructed. Such property is all included in said constitutional provision (section 10 of article XIII).

San Francisco and San Joaquin Valley Railway Company vs. City of Stockton, 149 Cal. 83; citing *San Francisco, etc., Railroad vs. State Board,* 60 Cal. 12; *San Francisco and San Matco Railway vs. Scott,* 142 Cal. 222.

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Section 465, subdivision 4, of the Civil Code, does no more, at most, than to give the power to the company to acquire, construct, and maintain such appendages and adjuncts as may be necessary for the convenient use of the road, and in no way purports to make such appendages and adjuncts a part of the roadway itself.

San Francisco and San Joaquin Valley Railway Company vs. City of Stockton, 149 Cal. 83.

Taking into consideration the object of the constitutional provision (section 10 of article XIII), it is to be construed as applying only to such portions of a road as have, in fact, been made and are a part of the *operated system*.

San Francisco and San Joaquin Valley Railway Company vs. City of Stockton, 149 Cal. 83.

For discussion of the jurisdiction for the assessment of street railroads as between the local authorities and the state board of equalization.

United Railroads of San Francisco vs. Colgan, 153 Cal. 53.

When a street improvement bond is claimed as a lien upon a railroad right of way situated upon the part of the street improved, and a sale thereof was demanded, a former judgment in favor of the railroad company against both parties to this suit enjoining the sale of the railroad company's easement in its right of way is conclusive against the sale of such easement, but not against a sale of the fee of the land subject to the easement.

Fox vs. Workman, 155 Cal. 201; distinguishing *Southern California Railway Company vs. Workman*, 146 Cal. 80.

Where the actual right of way of a railroad company consisted only of a continuous strip thirty feet wide, with here and there added lands contiguous to this strip, such added lands formed no part of the right of way, consisting of the "roadway, roadbed, and rails" of a railroad operated in more than one county in the state, assessable by the state board of equalization under section 10 of article XIII of the constitution. The county assessor properly assessed such added lands, and also sidetracks, switches, spurs, and passing tracks, situate outside of the actual right of way thirty feet in width; and the fact that most of such property fell within a possible right of way permitted to be nine rods in width by subdivision 4 of section 465 of the Civil Code, is immaterial.

Atchison, Topeka and Santa Fe Railway Co. vs. County of Los Angeles, 158 Cal. 437; affirming *San Francisco and San Joaquin Valley R. R. vs. City of Stockton*, 149 Cal. 87; *San Francisco vs. Central Pacific R. R. Co.*, 63 Cal. 467.

There is a clear and marked distinction between street railroads and commercial railroads. The termini of a commercial railroad may be hundreds of miles apart, while a street railroad is local in its origin, nature and character, whether it operates its road wholly in a city, or partly in the city and partly in the country, under distinct franchises constituting one continuous local line of street railroad.

Huntington vs. Curry, 14 Cal. App. 468; citing *San Francisco, etc., Railway vs. Scott*, 142 Cal. 222.

The street railroad and the commercial railroad are distinct, both as to the mode and manner of doing their business and in their object and purposes. They are in no sense competitors.

Huntington vs. Curry, 14 Cal. App. 468.

A commercial railroad company engages in a general traffic, and is unfitted to engage in the purely local traffic which characterizes the street railroad company.

Huntington vs. Curry, 14 Cal. App. 468.

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XXII. Assessments. Railroads.

The term "road," as used in section 468 of the Civil Code, was intended to include the main line and all branches of the railroad company, and this applies both to original companies and to consolidated companies; and there is nothing in the terms of the amendment of 1901 to section 473 of the Civil Code indicating an intent to change the law in this respect.

Northwestern Pacific Railroad Company vs. Lambert, 166 Cal. 749;

Northwestern Pacific Railroad Company vs. Snider, 166 Cal. 781.

The designation in the articles of consolidation and incorporation of a railroad corporation of some of the numerous roads comprising its system as "a line of railroad," does not make such roads entirely independent of the main line, when it appears from the articles of incorporation taken as an entirety that they are merely branch lines.

Northwestern Pacific Railroad Company vs. Lambert, 166 Cal. 749;

Northwestern Pacific Railroad Company vs. Snider, 166 Cal. 781.

Although section 3671 of the Political Code is to be construed with the preceding section in reference to state equalization of railway properties situated in more than one county, and provides that it shall not apply to such property situated in an incorporated city or town, unless its proper officers so elect, it refers to an election by the city trustees, and not by its officers *ex officio*, who have no power to make such election. No election within that section having been made in this case, but the city officers having solely elected to proceed under the act of 1895, its only valid assessment is under that act. There can be but one valid assessment of city property for the same purpose.

Madary vs. City of Fresno, 20 Cal. App. 91.

Where there has been an abandonment of a railroad right of way consisting of an easement only, the owner of the fee may maintain ejectment to recover possession. However, mere nonuser, not accompanied by an intent to abandon, will not divest the right of the railroad company to the easement. A long continued nonuser is, however, some evidence of an intent to abandon.

Home Real Estate Company vs. Los Angeles Pacific Company, 163 Cal. 710.

The act of Congress of July 1, 1862, granting to the Central Pacific Railroad Company a strip of land four hundred feet in width through the public lands of the United States as a right of way upon which to construct and operate a railroad, was a conclusive determination by the United States that the entire strip granted was necessary for that purpose, and the grantee had no power to alienate or dispose of any part of it for any other purpose; and a transfer of the railroad from one company to another, as its successor in the administration of the public use and for the purpose of continuing the operation thereof, carried with it a transfer of the entire right of way, and gave to the transferee a right of possession thereto.

Central Pacific Railway Company vs. Droege, 171 Cal. 32.

The estate granted in a strip of land designated as a right of way by act of Congress was an estate in fee for a special public purpose, subject only to reverter at the instance of the United States if the public use was not properly maintained, and the railroad company could not alienate any part of the right of way so as to interfere with the full exercise of the franchise granted, and the grant was a conclusive determination that the entire four hundred foot strip was necessary for the public purpose for which it was granted.

Central Pacific Railway Company vs. Droege, 171 Cal. 32.

The fact that the defendant railroads included certain unused portions of the strip embraced within the surveyor general's permit in their annual tax statements made to the state board of equalization, describing them as parts of their right of way,

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is positive evidence of the intention to retain these unused rights of way and not abandon them.

The People vs. Southern Pacific Company, 172 Cal. 692.

XXIII. Assessments. Railroad lands.

Under the provisions of the act of congress admitting California into the Union, no parcel of the public lands can be taxed by the state until a patent for it has been issued to a private person, or until such private person has become vested with a perfect equity, leaving only the dry legal title in the United States.

Central Pacific Company vs. Howard, 52 Cal. 227.

If a grant by congress to a railroad company of public land to aid in its construction contains conditions by which the grant is liable to be defeated, the land can not be taxed while the conditions are in force and are not fulfilled.

Central Pacific Railroad Company vs. Howard, 52 Cal. 227.

When the act of congress making a grant of public land to a railroad company to aid in its construction provides that the president shall appoint commissioners who shall report when a section of the road is completed, the land is not subject to taxation until such commissioners have reported, and until the company has complied with the conditions on which such lands were granted, and is entitled to a patent therefor.

Central Pacific Railroad Company vs. Howard, 51 Cal. 229.

The right to indemnity lands from which lands were to be selected in lieu of lands within the primary limits otherwise disposed of does not spring from a grant thereof *in prasenti*, either of sections or of quantity; and no right to any section thereof inured to the railroad company until the selection thereof was made, under the direction of the secretary of the interior.

Southern Pacific Railroad Company vs. Wood and Jack, 124 Cal. 475.

The general rule is that patents to a railroad for indemnity lands relate back to the date of selection of the land within the indemnity limits, with the approval of the land department.

Southern Pacific Railroad Company vs. Jackson Oil Company, 164 Cal. 392.

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The revenue act (of 1861) does not make a corporation liable for taxes assessed on its capital stock, when such capital is represented by shares of stock which are not the property of the corporation.

People vs. National Gold Bank of D. O. Mills & Co., 51 Cal. 508.

An assessment upon "the capital" of a corporation, *eo nomine*, held to be valid.

San Francisco vs. Spring Valley Water Works, 54 Cal. 571.

What is the stock of a corporation but its property—consisting of its franchise and such other property as the corporation may own? When, therefore, *all of the property* is assessed—its franchise and all other property of every character—then all of the stock of the corporation is assessed, and the mandate of the constitution is complied with. But, to assess all of the corporate property of the corporation, and also to assess to each of the stockholders the number of shares held by him, would, it is manifest, be assessing the same property twice. If it is competent to assess to the corporation all of the property held by it, and to the individual stockholder the respective interest owned by each of them, then a parallel case would be to say it was competent to assess to every partnership the property held by the firm, and to each individual partner his interest therein.

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Thus it is clear that in the one case the partner and in the other the stockholder would be compelled to pay twice on the same property, which is neither required nor permitted by the constitution.

People ex rel. Burke vs. Badlam, 57 Cal. 594. Affirmed in *Crocker vs. Scott*, 149 Cal. 575.

Plaintiff was the owner and assessed with certain shares of stock of a national bank, under the provisions of section 3640 of the Political Code, as amended March 22, 1880 (repealed in March, 1881). *Held*, that the provisions of said section, so far as it applied to national banks, was in violation of the restriction imposed by section 5219 of the revised statutes of the United States, forbidding the taxation of such shares at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state; and that the assessment was therefore void.

Miller vs. Heilbron, 58 Cal. 133.

Shares of stock, whether real or personal estate, are property.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

Good will does not enter into or form an element in the value of the shares of stock in a trading corporation.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

Where prior to the adoption of the constitution of 1879, all the tangible property of a corporation had been assessed, and the taxes paid thereon, and the corporation did not own, or have in its possession, or under its control, any of the shares of its capital stock, the same being owned and held by third persons, it is not liable for taxes assessed upon "capital" or upon "capital stock."

City and County of San Francisco vs. Spring Valley Water Works, 63 Cal. 524; affirming *People vs. National Bank*, 51 Cal. 509.

Shares of stock in a corporation, the tangible property of which is situated in another state, and subject to taxation under the laws thereof, such shares being owned by a resident of this state, are taxable here without regard to the taxes thus imposed upon the corporate property. Section 3650 (now section 3608) of the Political Code has reference to corporations whose property is situated in this state. The inhibition against double taxation only applies to such taxation by the same state or government.

City and County of San Francisco vs. Fry, 63 Cal. 470.

Shares of stock in mining corporations constituted under the laws of California, but whose tangible property is situated in another state, are taxable. Sections 3640 (now repealed) and 3641 of the Political Code do not apply to such corporations.

City and County of San Francisco vs. Flood, 64 Cal. 504; citing *San Francisco vs. Fry*, 63 Cal. 470.

Shares of the capital stock of corporations were taxable under the constitution of 1849.

City and County of San Francisco vs. Flood, 64 Cal. 504.

Shares of stock in *foreign corporations*, the certificates of which were in the hands of the owner in this state, on the first Monday in March, are assessable here.

Stanford vs. City and County of San Francisco, 131 Cal. 34; citing *Estate of Fair*, 128 Cal. 607; *Mackey & Dey vs. San Francisco*, 128 Cal. 678; *Mackey vs. San Francisco*, 113 Cal. 392.

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Certificates of stock in and bonds of *foreign corporations* owned by a deceased resident of this state, and which have come into the possession of the executrix of the estate, and certificates of stock and bonds of *foreign corporations* pledged in New York for money borrowed by decedent, who was a resident of California, were taxable in this state to him while living, and are taxable after his death to his estate, though never actually in the possession of the executrix.

Stanford vs. City and County of San Francisco, 131 Cal. 34; citing *Estate of Fair*, 128 Cal. 607; *Mackey & Dey vs. San Francisco*, 128 Cal. 678; *Mackey vs. San Francisco*, 113 Cal. 392.

Shares of stock in a domestic corporation are subject to the (inheritance) tax at the domicile of the corporation on their transfer by will or under the intestate laws, although the decedent was a nonresident and this without regard to the place where the certificate may be kept.

McDougald vs. Lilienthal, 53 Cal. Dec. 422.

Whether the loan secured by the stocks and bonds is or not an interest in the "property affected thereby" for the purposes of taxation, and conceding that the stocks and bonds may be exempt from taxation, the debt secured thereby for money loaned is not exempt, but may be taxed to the lender.

Savings and Loan Society vs. City and County of San Francisco, 131 Cal. 356; *City and County of San Francisco vs. La Societe Francaise, etc.*, 131 Cal. 612; *Security Savings Bank vs. City and County of San Francisco*, 132 Cal. 599.

Under the provisions of the state constitution, declaring that all property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, and that the word "property" includes shares of stock, and sections 3617 and 3627 of the Political Code, it is the duty of the assessor to assess shares of stock in corporations organized under the laws of California at their full value, unless there is something in the provisions of such code which exempts them from taxation.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559.

Under section 3608 of the Political Code, for purposes of taxation, the shares of stock in a corporation represent the value of the aggregate of the assets of the corporation, and have no value independent of the corporate property, and when all such property is assessed to the corporation it would be double taxation to assess the shares as well as the corporate property. Such result could only follow where *all* the property of the corporation was assessed to it, and would not result where none, or only a portion of the property of the corporation going to make up the value of the stock, was taxed to it.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559; citing *People vs. National Bank*, 123 Cal. 60; *People ex rel. Burke vs. Badlam*, 57 Cal. 601; *City and County of San Francisco vs. Fry*, 63 Cal. 470; *City and County of San Francisco vs. Flood*, 64 Cal. 504.

While the value of the corporate shares is determined by the aggregate value of the corporate property, such property may or may not be within the jurisdiction of the state for purposes of taxation. If it is within the state, and assessed to the corporation, then the shares of stock can not also be assessed to the stockholders, as that would constitute double taxation. But section 3608 of the Political Code does not exempt such shares from taxation when all the assets of the corporation are *not taxed in this state* by reason of the fact that some of them are beyond its jurisdiction. Neither is it material that the tangible property of the corporation is situated in some other state and has been there taxed. The fact that some of the property of the corporation is assessed in another state or country is no prohibition

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of the taxation of the shares of stock held there. *The inhibition of double taxation only applies to such taxation in the same state or government.*

Chesebrough vs. City and County of San Francisco, 153 Cal. 559; citing *Crocker vs. Scott*, 149 Cal. 575.

Section 3608 of the Political Code, properly construed, only means that when the aggregate property of a California corporation is assessed *in this state*, shares of stock of the corporation shall not be assessed, but that if all such property is not here assessed the actual value of such stock, less the value of the corporate property which is assessed here, shall be taxed. Property of the corporation located outside of the state, and over which the state can not exercise its sovereign power of taxation, is not to be considered in diminishing the actual value of the stock held here for purposes of taxation. A contrary construction of that section would render it unconstitutional.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559.

Sections 3617 and 3627 of the Political Code, defining cash values and declaring that all property should be assessed thereat, provides an adequate method of ascertaining the taxable value of shares of stock in a domestic corporation for assessment to the individual stockholders.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559; citing *Crocker vs. Scott*, 149 Cal. 575.

In assessing shares of stock in a California corporation to the individual stockholders, the proper method to be followed by the assessor, in order to avoid double taxation and at the same time to assess the stock at its full cash value, is to deduct the value of the corporate property *actually assessed in this state* from the value of the shares, and to assess the stock as of the value diminished by the deduction.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 601.

The state has a right to fix the *situs* of shares of stock in a domestic corporation, though its property is situated out of the state, and may assess such shares according to their cash value, without deduction on account of such outside property.

Canfield vs. County of Los Angeles, 157 Cal. 617;

Doheny vs. County of Los Angeles, 157 Cal. 624.

It is the purpose of all revenue laws, as nearly as possible, to impose upon all property its just proportion of taxation, and a construction of the statute would not be had which will permit shares of stock held here in domestic corporations whose property is located beyond the state to escape their just burden of taxation.

Canfield vs. County of Los Angeles, 157 Cal. 617;

Doheny vs. County of Los Angeles, 157 Cal. 624; affirming *Chesebrough vs. City and County of San Francisco*, 153 Cal. 559; *Stanford vs. San Francisco*, 131 Cal. 34; *Estate of Fair*, 128 Cal. 613.

In view of the purpose of taxation, which is to tax citizens for the support of the government that protects them and their property, the provision of section 1 of article XIII of the state constitution, providing that "all property in the state * * * shall be taxed in proportion to its value," including "stocks," can not be construed to mean that "stocks" are not to be taxed when they represent property situated out of the state, since such a construction would be at variance with the ordinary meaning of the words used in that section and would result in unfair taxation of personal assets.

Canfield vs. County of Los Angeles, 157 Cal. 617;

Doheny vs. County of Los Angeles, 157 Cal. 624.

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XXIV. Assessments. Shares of stock. XXV. Assessments. Telegraph and Telephone lines.

XXVI. Assessments. Vessels, steamers, etc.

Double taxation in a legal sense does not exist, unless the double tax is levied upon the same property within the same jurisdiction. Where the property owned by a corporation is in another jurisdiction, the assessment of shares of stock therein held by citizens of this state is of property having its *situs* here, and may be taxed to them without any double taxation under the laws of this state. It is immaterial whether the property of the corporation is or is not taxed in another jurisdiction.

Canfield vs. County of Los Angeles, 157 Cal. 617;
Doheny vs. County of Los Angeles, 157 Cal. 624.

The market value of the stock of a corporation on a given day is synonymous with "value" and "full cash value" defined by section 3617 of the Political Code, and in the absence of exceptional or extraordinary conditions giving an abnormal value to the stock on the first Monday in March, the assessor may take its market value on that day as representative of its then full cash value.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204; citing *Crocker vs. Scott*, 149 Cal. 575.

The *situs* of stock in a corporation is in the state of the incorporation, for the purposes at least of the inheritance tax law.

McDougald vs. Low, 164 Cal. 107; citing *Murphy vs. Crouse*, 135 Cal. 19.

XXV. Assessments. Telegraph and Telephone lines.

Under sections 3617 and 3663 of the Political Code, telegraph and telephone lines can not be assessed as improvements on land, but must be assessed as personal property.

Western Union Telegraph Company vs. Modesto Irrigation District, 149 Cal. 662.

The franchises granted to the Western Union Telegraph Company by the act of congress of April 24, 1866, to construct, maintain, and operate its lines of telegraph over the public domain and across and under the navigable waters, and along the military and post roads of the United States, in such manner as not to interfere with ordinary travel thereon, are not subject to state taxation, directly or indirectly; and a city has no right to assess and tax the same when exercised upon its streets.

Western Union Telegraph Company vs. City of Visalia, 149 Cal. 744; affirming *San Francisco vs. Western Union Telegraph Company*, 96 Cal. 140.

A city may, under its police power, pass an ordinance regulating the placing of telegraph poles and wires so as to prevent unreasonable obstruction of travel, but can not deprive it of its right to construct and maintain them. An ordinance authorizing the construction, and permitting them to remain where placed, in consideration of the telegraph company's written agreement to permit their use by the city for certain purposes, does not grant an effective municipal franchise having a real existence distinct from its federal franchise, which may be taxed by the city.

Western Union Telegraph Company vs. City of Visalia, 149 Cal. 744; distinguishing *Western Union Telegraph Company vs. County of San Joaquin*, 141 Cal. 264.

XXVI. Assessments. Vessels, Steamers, etc.

A steamboat whose owners reside in New York and by whom it was sent to San Francisco and used in navigation within the waters of the state, is liable to assessment and taxation. Nor does it matter that the same property is taxed in New York for the same year.

Minturn vs. Hays, 2 Cal. 590.

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XXVI. Assessments. Vessels, steamers, etc. XXVII. Assessment Roll.

A vessel sailing from a port in which the owner resides is not liable to taxation in another county because it is temporarily in such other county for the purpose of being freighted.

People vs. Niles, 35 Cal. 282.

The steamers used by the Central Pacific Railroad Company in transporting its freight cars across the bay of San Francisco are not included in the property defined by section 10 of article XIII of the constitution—the franchise, roadway, roadbed, rails and rolling stock of railroads operated in more than one county in the state—and should be assessed by the local assessors, not by the state board of equalization.

City and County of San Francisco vs. Central Pacific Railroad Company, 63 Cal. 467.

A vessel registered out of the state, and never here except transiently in the course of her voyages for the purpose of receiving and discharging cargo, is not subject to assessment for taxes within the state. In such case it make no difference that the vessel is owned in part by residents of the state.

City and County of San Francisco vs. Talbot, 63 Cal. 485.

A seagoing vessel engaged in foreign or interstate commerce, though constructed in the State of Washington and temporarily registered there, which has San Francisco as her "home port," as defined in section 4141 of the revised statutes of the United States, by reason of her ownership by several owners, and the usual residence of her managing owner at San Francisco, is deemed to be at her "home port" in San Francisco, for the purposes of taxation, regardless of her physical absence therefrom or of the fact that she has never been in the waters of the "home port," nor permanently registered thereat, as provided in that section.

Olson vs. City and County of San Francisco, 148 Cal. 80; distinguishing *San Francisco vs. Talbot*, 63 Cal. 485.

Where a seagoing vessel has several owners, only the usual residence of the managing owner determines the "home port," and the residence of the other owners, and the amount of the interest of the managing owner in the vessel, are immaterial.

Olson vs. City and County of San Francisco, 148 Cal. 80; distinguishing *San Francisco vs. Talbot*, 63 Cal. 485.

Vessels employed in foreign or interstate commerce, which had not by the manner of their use acquired an actual *situs* elsewhere, are properly assessed for taxation at San Francisco, the port of the domicile of their sole owner, where they are registered under the laws of the United States, regardless of the fact that they were outside of the waters of the state from a date preceding the first Monday in March in the year of the assessment and at the time of the assessment and collection of the tax, and that some of them had never been within its waters.

California Shipping Company vs. City and County of San Francisco, 150 Cal. 145; citing *Olson vs. San Francisco*, 148 Cal. 80.

XXVII. Assessment Roll.

Where the designation of the land in the assessment book is such as to afford the owner the means whereby the land may readily be identified, or does not mislead or is not calculated to mislead him, it is sufficient.

Corson vs. Crocker, 31 Cal. App. 626; citing *San Gabriel L. & W. Co. vs. Witmer Co.* 96 Cal. 635; *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Montor*, 150 Cal. 560.

Though the assessment roll may be *prima facie* evidence of its contents, it is not conclusive in a proceeding directly based upon its correctness.

People vs. Lansing, 55 Cal. 393.

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XXVII. Assessment Roll.

In an action by a county to recover state and county taxes, the assessment roll, in the form prescribed by law, is *prima facie* evidence of the plaintiff's right to recover.

Modoc County vs. Churchill, 75 Cal. 172.

An assessment of land which does not show the road district within which the land is situated is defective.

Knott vs. Peden, 84 Cal. 299.

Where the assessment list for taxes of the city of Santa Barbara is headed in the first column over the taxpayers' names "Description of property according to map-book of the city of Santa Barbara," under which are the words "City Lot," and the succeeding columns are headed "Lot" and "Block" under which are given respectively the number of the lot and the number of the block, the assessment list is sufficient to show that the lot assessed is situated within the city.

City of Santa Barbara vs. Eldred, 108 Cal. 294.

In an assessment of property it must be shown upon the assessment roll the proper school and road district in which it is situated, otherwise the assessment is defective.

Kern Valley Water Company vs. County of Kern, 150 Cal. 801; affirming *Kern Valley Water Company vs. County of Kern*, 137 Cal. 511.

A statement in the assessment book that it was the book of assessments for the year "1898" was a proper designation of the year. The fact that the fiscal year begins July 1st and includes the last half of one calendar year and the first half of the succeeding year, is immaterial.

Chapman vs. Zoberlein, 152 Cal. 216.

It is made the official duty of the assessor to prepare an assessment book with proper headings as directed by the state board of equalization, in which must be listed all property within the county under the proper head; and the presumption in favor of their action is that they have each performed their official duty.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185; citing *Bakersfield, etc., Oil Co. vs. Kern County*, 144 Cal. 153.

The provisions requiring the entry of the post-office address of each taxpayer on the assessment book and delinquent list were designed for the purpose of affording the proper officers ready means of information thereof.

Smith vs. Furlong, 160 Cal. 522;

Campbell vs. Moran, 161 Cal. 325.

As section 3650 of the Political Code requires the assessor to state in the assessment of property "the name and post-office address, if known, of the person to whom the property is assessed," the address shown on the *last assessment* constitutes the last known post-office address so far as the tax records are concerned, and in the absence of information of a different address, the tax collector must take notice of the address so shown and mail the notice thereto.

Campbell vs. Moran, 161 Cal. 325; affirming *Smith vs. Furlong*, 160 Cal. 522. See, also, *Smith vs. Boston*, 161 Cal. 341.

Section 3650 of the Political Code requires that the post-office address, if known, shall be entered on the assessment roll. There is no provision of the kind with reference to the index to the roll. If the tax collector had failed to mail, and had made a deed reciting that the address was unknown, we should hardly be inclined to hold that the effect of the recital was overcome by the mere fact that the index, which is not required to contain an address, did in fact contain one.

Krotzer vs. Douglas, 163 Cal. 49.

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XXVII. Assessment Roll. XXVIII. Assessment Roll. Abbreviations. XXIX. Assessment Roll. Dollar-mark.

The provision of section 3785 of the Political Code that the deed to the state based on a sale for delinquent taxes must recite the "name of the person assessed," requires the recital of the name of the person assessed as it appears on the assessment roll. A failure to observe such requirement renders the deed void, and is not remedied or cured by either section 3807 or 3628 of that code. Neither of those sections purports to apply to the deed made to the state in pursuance of a delinquent tax sale.

Henderson vs. De Turk, 164 Cal. 296; citing *Grimm vs. O'Connell*, 54 Cal. 522.

Water, in its natural state, is part of the land. Like any other part thereof, it may become personal property by being severed from the realty, but not until then. When it is sold for domestic use and delivered by means of pipes to the premises in the usual manner, the pipes themselves are fixtures and part of the realty, and this severance takes place when the water is taken from the pipes by the consumer. In case of water for irrigation, delivered in ditches or pipes, the severance does not take place at all. The water, by that use of it, permeates the soil and remains a part of the realty. The water, therefore, of an irrigation company, stored in its reservoir, is real property, the right to use of which may become appurtenant to the land.

Copeland vs. Fairview Land and Water Company, 165 Cal. 148.

The irrigation act does not require that the assessment book should show on its face that the total valuation, as finally equalized by the board of directors, had been extended into columns and added by the secretary within ten days after the close of the session of the board of equalization.

Imperial Land Company vs. Imperial Irrigation District, 173, Cal. 668.

XXVIII. Assessment Roll. Abbreviations.

In the description of land by congressional subdivisions, the use of the figures "2" and "4" instead of the usual fractions " $\frac{1}{2}$ " and " $\frac{1}{4}$ " was sustained in

Reclamation District vs. Phillips, 108 Cal. 306, 324.

The use of abbreviations in assessment matters is permissible if thereby the property may be easily known.

Baird vs. Monroe, 150 Cal. 560; affirming *Rollins vs. Woodman*, 117 Cal. 516. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

XXIX. Assessment Roll. · Dollar-mark.

Assessments which do not give cash valuations in gross, or detail, are radically defective. Figures placed opposite town lots in an assessment roll, without showing whether they are dollars, cents, or eagles, do not fix any valuation to the same.

Hurlburt vs. Butenop, 27 Cal. 50.

People vs. San Francisco Savings Union, 31 Cal. 132.

An assessment of real estate in which for the value of the same certain figures are written, with nothing therewith to show they represent dollars, is void.

Braly vs. Seaman, 30 Cal. 610; citing *Hurlburt vs. Butenop*, 27 Cal. 57.

Figures placed in valuation columns of the assessment roll without anything to indicate whether they represent dollars, cents or eagles, the assessment is void, and the auditor can not supply such omission, nor can the parol testimony of the assessor be received to show what such figures were intended to represent.

People vs. San Francisco Savings Union, 31 Cal. 132; affirming *Hurlburt vs. Butenop*, 27 Cal. 50.

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XXIX. Assessment Roll. Dollar-mark.

Where, in an item column of figures on the assessment roll, the dollar-mark is prefixed to some, but not to all items, held that all figures must be construed to mean dollars.

People vs. Empire Gold and Silver Mining Company, 33 Cal. 171.

Where, in an assessment roll, there was neither a dollar-mark prefixed to the figures inserted in the column headed "Valuation of lands" nor at the head of such column and nothing appeared elsewhere in the roll to explain the intended meaning of said figures, held, the assessment was void; further, that such defect could not be cured by legislative action.

People vs. Hastings, 34 Cal. 571; citing *People vs. San Francisco Savings Union*, 31 Cal. 135.

The abbreviation "Dolls" is equivalent to the word "dollars" in an assessment for taxes.

Salisbury vs. Shirley, 66 Cal. 223; distinguishing *People vs. S. F. Savings Union*, 31 Cal. 132, and *People vs. Hastings*, 34 Cal. 574.

The failure to place a dollar-mark before the figures intended to designate the amount of the charges assessed against a particular person is not fatal to the assessment against him, when it appears from the record that such assessment was only one of a number of others contained in the list, and that in a number of cases there was a dollar-mark preceding the figures in the column headed with the words "amount of charges assessed."

Swamp Land Reclamation District No. 407 vs. Wilcox, 75 Cal. 443; citing *People vs. Empire G. and S. M. Co.*, 33 Cal. 171.

Where there is no dollar-mark, word, abbreviation, or other character in the original assessment roll to show what was meant or intended by the figures in the columns headed "value" or "taxes," the assessment is fatally defective, and the deed based thereon is void.

Emeric vs. Alvarado, 90 Cal. 444; citing *Hurlburt vs. Butenop*, 27 Cal. 57; *Braly vs. Seaman*, 30 Cal. 611; *People vs. S. F. Savings Union*, 31 Cal. 132; *People vs. Hastings*, 34 Cal. 571; *People vs. Hollister*, 47 Cal. 408.

In the assessment of a road tax, the separation of dollars from cents is sufficiently indicated by the usual subdivisional account-book lines between the decimal parts of the dollars and the units and tens of dollars.

County of San Luis Obispo vs. White, 91 Cal. 432.

In the delinquent tax list, immediately under the heading "amount" were the figures "4 00"—there being a space between the figure 4 and the two ciphers, as usually appears when they are intended to mean "dollars," but there was no dollar-mark. Held, that the delinquent list clearly indicated that dollars were meant, and that the absence of the dollar-mark did not invalidate the assessment or the tax sale.

Carter vs. Osborn, 150 Cal. 620; distinguishing *Hurlburt vs. Butenop*, 27 Cal. 50; *Braly vs. Seaman*, 30 Cal. 610; *People vs. S. F. Savings Union*, 31 Cal. 132; *People vs. Hastings*, 34 Cal. 571; *Emeric vs. Alvarado*, 90 Cal. 144.

The omission to properly place the "dollar-mark" on the assessment roll for the assessment itself is a serious defect, but not considered so seriously in a delinquent list or subsequent proceeding.

Carter vs. Osborn, 150 Cal. 620.

An assessment of land, which shows on the face of the assessment roll that there was no dollar-mark or other mark, sign, word, or abbreviation or explanation, to

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indicate what was meant by the figures in the column designed to show the value of the property and the amount of the taxes, is void, and a sale for delinquent taxes and deeds made thereunder is likewise void.

Fox vs. Townsend, 152 Cal. 51; citing *Hurlburt vs. Butcnop*, 27 Cal. 54; *Braly vs. Seaman*, 30 Cal. 611; *People vs. S. F. Savings Union*, 31 Cal. 132; *People vs. Hastings*, 34 Cal. 571; *Elmeric vs. Alvarado*, 90 Cal. 444; distinguishing *Carter vs. Osborn*, 150 Cal. 620.

An assessment of land, and the tax sale based thereon are void, if there was no dollar-mark or other abbreviation or indication on the assessment roll showing what the figures meant which appeared in the column for the statement of the amount of the tax on each lot.

Secombe vs. Louis Phillips Estate, 162 Cal. 161; citing *Fox vs. Townsend*, 152 Cal. 51.

Where an assessment book otherwise conforms to the requirements of section 3650 of the Political Code, and is divided into the columns with distinct headings prescribed by the state board of equalization, the mere absence of a dollar-mark at the head of the column entitled "Value of real estate other than city and town lots," does not invalidate an assessment of the real property described opposite the figures inserted in such column, if the dollar-mark appears in the heading of the last column entitled "Total value of all property after deductions," and the same figures are inserted in that column in the appropriate place opposite the property described, without any entries being made in the intermediate columns. As an entirety, the book is equivalent to a statement that the value of the property assessed is the amount stated in the last column.

Knoblock vs. Associated Oil Company, 170 Cal. 144; distinguishing *Fox vs. Townsend*, 152 Cal. 51.

Where the column in an assessment book of an irrigation district designed to show the values of the properties assessed was headed by a dollar-mark, it was not necessary to the validity of a particular assessment to repeat that symbol before the valuation inserted in the column. The fact that such symbol was also inserted at the head of other columns not designated to show valuation is immaterial.

Imperial Land Company vs. Imperial Irrigation District, 173 Cal. 668.

XXX. Assessment Roll. Certifying.

Parol evidence is not admissible to vary or affect the written record of an assessment.

Spring Valley Water Co. vs. County of Alameda, 24 Cal. App. 278; citing *Allen vs. McKay Co.*, 139 Cal. 94; *Savings and Loan Society vs. San Francisco*, 146 Cal. 680.

Under the act of April 1, 1911 (Stats. 1911, p. 530), all power of the state board of equalization in the matter of the making of assessments for state purposes and the equalization thereof with the final delivery by it of the record of assessments to the state controller, and thereafter a writ of mandate will not lie to compel it to assess the property of a railroad for taxes for the current fiscal year. Such an assessment would be wholly void.

San Diego and Arizona Railway Co. vs. State Board of Equalization, 164 Cal. 41.

On an application for a writ of mandate, in the absence of a showing to the contrary in the petition, it must be presumed that official duty has been regularly performed, and that the state board of equalization finally delivered its record of assessments to the state controller on the day required by the statute.

San Diego and Arizona Railway Co. vs. State Board of Equalization, 164 Cal. 41.

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XXX. Assessment Roll. Certifying.

The assessment roll, when completed and certified by the assessor to the board of supervisors, is the only evidence of his acts and intentions. When the assessor has completed his assessment roll and delivered it to the clerk of the board of supervisors, his functions cease.

People vs. San Francisco Savings Union, 31 Cal. 132.

The assessor may certify to the assessment roll after it has been returned to the clerk, and after the first Monday in August, for he does not lose control of the assessment roll until it has been both certified and returned to the clerk.

People vs. Eureka Lake and Yuba Canal Company, 48 Cal. 143.

The statute requiring the assessor to return the assessment roll to the clerk prior to the first Monday in August is directory merely; and the failure of the assessor to return it before that time is a matter of which the taxpayer can not complain.

People vs. Eureka Lake and Yuba Canal Company, 48 Cal. 143; citing *Hart vs. Plum*, 14 Cal. 148.

The "tax list or assessment roll," which must be certified by the assessor and delivered to the clerk of the board of supervisors is the only record of his final judgment, as to the value of the property.

People vs. Stockton, etc., Railroad Company, 49 Cal. 414.

Where the duties of an assessor with respect to a particular assessment have ceased, a court has no power to authorize him to amend, alter, or modify the assessment.

Johnson vs. Malloy, 74 Cal. 430.

The affidavit to the corrected assessment roll required to be made by the clerk of the board of equalization, and the affidavit of the auditor required to be made before such roll is delivered to the tax collector, are essentials to the validity of the assessment book, and without such affidavits the tax collector has no right to enforce the assessment.

Miller vs. County of Kern, 137 Cal. 516.

The date of the listing of property by the taxpayer, and of the valuation of real property, sworn to by the owner before the assessor, can not be taken as the date of the assessment. The sole and exclusive evidence of the date of the assessment of real property is the date when the assessment roll was completed and certified by the assessor; and the parole evidence of the assessor is not admissible to show an earlier date of such assessment.

Allen vs. McKay Co., 139 Cal. 94; citing *People vs. Savings Union*, 31 Cal. 132; *People vs. Stockton, etc., Railroad Company*, 49 Cal. 414. See, also, *Allen vs. McKay Co.*, 120 Cal. 332.

Under section 2 of the Storm-water District Act (Stats. 1909, p. 339), which requires the clerk of the board of supervisors to mail copies of the notice of intention to form the district to each owner of land in the proposed district whose name appears as such on the last completed assessment roll, the mailing of such notices prior to the first Monday in July, 1916, to the persons whose names in fact thereafter appeared on the assessment roll of 1916-17 (but omitting names of some persons whose names, as property owners within the proposed district, appeared upon the assessment roll of the county for the year 1915-16), is not a sufficient notice to give the board jurisdiction to proceed further with the formation of the district, as under section 3672 of the Political Code there could not be a completed assessment roll for such year 1916-17 until such first Monday in July.

Bryant vs. Board of Supervisors of Orange County, 32 Cal. App. 495.

A defect in an assessment, caused by the omission of the clerk of the board of supervisors and of the county auditor, respectively, to affix to the corrected assessment book their affidavits, as required by sections 3682 and 3732 of the Political

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Code, within the time limited, is cured under section 3885 of that code as to a party assessed who pays his taxes under protest, by the making and affixing of such affidavits to the assessment book prior to the payment of taxes. The making and affixing of such affidavits are "acts relating to the assessment or collection of taxes," within the meaning of that section, which are not rendered illegal because the same were not completed within the time required by law.

Miller vs. County of Kern, 150 Cal. 797;

Kern Valley Water Co. vs. County of Kern, 150 Cal. 801. See, also, *Miller vs. County of Kern*, 137 Cal. 516.

There was not an entire failure or omission to affix the certificates of the clerk and auditor, as required by sections 3682 and 3732 of the Political Code; they were properly made and affixed, but not within the time specified in the code. No injury was caused by the delay. By the express language of section 3885 of the Political Code, the delay did not make the affidavits or the assessment in question illegal. They were lawfully made and attached, even if at a much later date, thereby rendering the assessment valid.

Miller vs. County of Kern, 150 Cal. 797; citing *Buswell vs. Supervisors*, 116 Cal. 354; *People vs. Eureka, etc.*, Co., 48 Cal. 146; *Hart vs. Plum*, 14 Cal. 155; *Payne vs. San Francisco*, 3 Cal. 126. See, also, *Kern Valley Water Co. vs. County of Kern*, 150 Cal. 801.

Where an assessment and the tax levied thereon were in all other respects valid, the mere omission from the assessment book of the affidavits of the clerk and auditor required by sections 3682 and 3732 of the Political Code will not warrant the recovery of such tax *after* it has been paid.

Steele vs. County of San Luis Obispo, 152 Cal. 785; citing *Miller vs. County of Kern*, 137 Cal. 521.

The matter of the certification and authentication of the assessment roll in cities of the sixth class is fully covered by the provisions of the municipal corporation act, and, consequently, section 3732 of the Political Code, requiring the assessment roll of state and county taxes to be authenticated by the affidavit of the county auditor, is inapplicable to such city taxing system.

City of Escondido vs. Wohlford, 153 Cal. 40.

In *Miller vs. County of Kern*, 137 Cal. 521, it has been held that in the case of assessments for state and county purposes the affidavit of the auditor under section 3732 of the Political Code, as to the correctness of the assessment roll, is essential to the enforcement of the tax.

City of Escondido vs. Wohlford, 153 Cal. 40.

The "last assessment roll," within the meaning of section 199 of the Code of Civil Procedure, is the last one *completed*. The assessment roll is not completed until certified by the assessor and delivered to the clerk of the board of supervisors.

Houghton vs. Market St. Railway Co., 1 Cal. App. 576; citing *Allen vs. McKay Co.*, 139 Cal. 94.

The owner of real property may have the title thereto quieted as against a purchaser at a tax sale, if the assessment roll was not authenticated by the auditor as required by section 3732 of the Political Code.

Henderson vs. Ward, 21 Cal. App. 521; citing *Miller vs. County of Kern*, 137 Cal. 516 and 150 Cal. 797; distinguishing *Steele vs. County of San Luis Obispo*. See, also, *Brady vs. Bostwick*, 21 Cal. App. 526; *Henderson vs. Burke*, 21 Cal. App. 526; *Henderson vs. Bostwick*, 21 Cal. App. 797; *Moyer vs. Taylor*, 21 Cal. App. 797; *Moyer vs. Wilson*, 166 Cal. 261; *Moyer vs. DeWitt*, 166 Cal. 780.

NOTE.—In connection with authentication of assessment roll, see "validating act," approved April 1, 1915 (Stats. 1915, p. 23), cited herein under section 3682 of the Political Code, *ante*.

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XXX. ASSESSMENT ROLL. CERTIFYING. XXXI. ASSESSMENT ROLL. STAMPING "SOLD TO STATE."

The tax collector can not make a valid sale of real property on account of delinquent taxes until he has received from the auditor the tax rolls authenticated by the affidavit required by section 3732 of the Political Code. Moreover, the mere proof of the existence of the requisite facts which might have been set forth in the auditor's affidavit to tax rolls, can not supply the want of such affidavit and validate a tax sale when there was no affidavit.

Henderson vs. Ward, 21 Cal. App. 520.

There is no authority to sell property for delinquent taxes, and an attempted sale thereof passes no title, if at the time of the attempted sale, no affidavit of the auditor, as required by section 3732 of the Political Code, had been made or attached to the corrected assessment book for the year in which the delinquent tax purports to have been levied.

Moyer vs. Wilson, 166 Cal. 261.

Moyer vs. DeWitt, 166 Cal. 780; distinguishing *Miller vs. County of Kern*, 137 Cal. 516; *Miller vs. County of Kern*, 150 Cal. 797; *Steele vs. County of San Luis Obispo*, 152 Cal. 785. See, also, *Brady vs. Davis*, 168 Cal. 259.

An affidavit of the auditor required under section 3732 of the Political Code, attached to the assessment book after an attempted sale for delinquent taxes had taken place, did not validate the sale.

Moyer vs. Wilson, 166 Cal. 261.

Moyer vs. DeWitt, 166 Cal. 780; citing *City of Escondido vs. Wohlford*, 153 Cal. 40.

XXXI. ASSESSMENT ROLL. STAMPING "SOLD TO STATE."

A tax sale to the state is not rendered void by reason of the fact that on the assessment roll for the next ensuing year there were stamped the words "sold to state," without a statement that it was "sold for taxes" and the date of the sale.

Carter vs. Osborn, 150 Cal. 620.

After land has been sold to the state for delinquent taxes, and a sale and deed thereof by the state has been subsequently made, the owner can not be held to have been deprived of his property without due process of law, by reason of the failure of the public officers, while the property remained unredeemed, to comply with the provisions of section 3680 of the Political Code, requiring that upon each subsequent assessment the assessor must enter the fact that the property has been sold for taxes and the date of the sale, and that upon all bills and statements there must be written or stamped the words "sold for taxes," and the date of the sale. The legislature had the power in the first instance to have dispensed with such requirements, without infringing upon the rights of the taxpayer as to notice, or to provide, as it has done by section 3787 of the Political Code, that the tax deed shall be conclusive evidence of a compliance with such requirements.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Rollins vs. Wright*, 93 Cal. 395; *Klumpke vs. Baker*, 131 Cal. 81.

Consideration of sections 3680 and 3801 of the Political Code, requiring the stamping on the assessment roll and entry of the fact that the property had been sold for taxes, and the date of such sale.

Fox vs. Townsend, 152 Cal. 51.

The failure to stamp on the assessment book and tax receipts the fact that the property had been "sold to the state" did not deprive the owner of his property without due process of law, and such omission is cured by the provisions of section 3787 of the Political Code, making the deed conclusive evidence of certain proceedings.

Phillips vs. Cox, 7 Cal. App. 308; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 239.

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XXXII. Exemptions.

XXXII. Exemptions.

The constitution and laws upon the subject of taxing property are to be understood as referring to private property and persons, and not including public property of the state, or any subordinate part of the state government.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *People vs. Doe*, 36 Cal. 222; *People vs. McCreery*, 34 Cal. 456; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360; *Smith vs. City of Santa Monica*, 162 Cal. 221.

The general rule applied in all such cases is that statutes authorizing liens on or forced sales of property, generally, will not be held applicable to public property, unless the intention to make them so expressly or plainly appears.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *Mayrhofer vs. Board of Education*, 89 Cal. 110; *Ruperich vs. Bachr*, 142 Cal. 193.

An assessment for purposes of taxation levied upon public property of a mandatory or agency of the state, such as a municipal corporation, is void.

Smith vs. City of Santa Monica, 162 Cal. 221; citing *People vs. McCreery*, 34 Cal. 432; *People vs. Doe*, 36 Cal. 220; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360.

The legislature has no power to exempt property from taxation.

Minturn vs. Hays, 2 Cal. 590.

Exemption from taxation is a privilege of the government, not an incident to the property.

State vs. Moore, 12 Cal. 56.

Lands belonging to the United States are exempt from assessment by the state laws and the act of congress admitting the state into the Union.

People vs. Morrison, 22 Cal. 73; citing *Hall vs. Dowling*, 18 Cal. 621; distinguishing *State vs. Moore*, 12 Cal. 56.

The legislature can not exempt private property from taxation.

People vs. McCreery, 34 Cal. 432;

People vs. Gerke, 35 Cal. 677;

People vs. Black Diamond, etc., Co., 37 Cal. 54.

The exemption of private property and of growing crops from taxation by the legislature unwarranted and unconstitutional.

People vs. Gerke, 35 Cal. 677; affirming *People vs. McCreery*, 34 Cal. 433.

See, also, *People vs. Black Diamond, etc., Co.*, 37 Cal. 54.

It was not intended by the framers of the constitution that the legislature should have the power to exempt any kind of property from taxation.

People vs. Eddy, 43 Cal. 331.

The property of the United States, or of this state, or of a municipal corporation, is not subject to taxation for revenue purposes, and may be exempted from assessments for local improvements.

People vs. Austin, 47 Cal. 353; citing *People vs. McCreery*, 34 Cal. 456; *People vs. Shearer*, 30 Cal. 645; *Fall vs. Marysville*, 19 Cal. 391; *Low vs. Lewis*, 46 Cal. 549.

A mortgage of land, executed to the regents of the University of California, to secure money due said body for any purpose for which it was created, and the interest which it thereby, for the purposes of taxation, holds in the land, is the prop-

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erty of the state, within the meaning of section 1 of article XIII of the constitution, exempting state property from taxation, and as such the said interest is exempt from taxation.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *Hollister vs. Sherman*, 63 Cal. 38; *People vs. Board of Supervisors*, 77 Cal. 137; *Henne vs. Los Angeles County*, 129 Cal. 298.

The provisions of the Political Code as they existed prior to the amendments of 1909 (Political Code, sections 1670, 1675) exempts the property in a union high school district from taxation for the support of a county high school. Such exemption is not in violation either of subdivision 20 of section 25 of article IV of the constitution, which prohibits local laws exempting property from taxation, or of section 11 of article I, which requires all laws of a general nature to have a uniform operation.

Wood vs. County of Calaveras, 164 Cal. 398.

A leasehold is property under certain circumstances and for certain purposes, but it is not property for the purposes of taxation under our revenue and fiscal laws, notwithstanding the fee is owned by the state and hence is not taxable.

San Pedro, Los Angeles and Salt Lake Railroad Co. vs. City of Los Angeles, 167 Cal. 425; distinguishing *Graciosa Oil Co. vs. Santa Barbara County*, 155 Cal. 140.

All property administered by the regents of the state university is exempt from taxation, and a deed of the tax collector on a sale of property so administered under an assessment against the regents would be void on its face. No cloud upon the title would be created by the deed, and an injunction will not be granted to restrain the sale.

Hollister vs. Sherman, 63 Cal. 38; citing *Grimm vs. O'Connell*, 54 Cal. 521.

Fruit trees are not growing crops within the meaning of article XIII, section 1 of the constitution, and are subject to taxation.

Cottle vs. Spitzer, 65 Cal. 456.

NOTE.—Decision is prior to adoption of section 124 of article XIII of the constitution in 1894.

A seat in the San Francisco Stock Exchange Board is not taxable property. An attempt to tax such seat, in addition to the taxes upon all the property of the stock board and corporation is void, as an attempt at double taxation.

City and County of San Francisco vs. Anderson, 103 Cal. 69; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Lowenberg vs. Greenebaum*, 99 Cal. 162; distinguishing *Clute vs. Loveland*, 68 Cal. 254. But see, *Rogers vs. Hennepin Co.*, 240 U. S. 184.

Neither the court nor the assessor has authority to enlarge the definition of the word "improvements" as found in section 3617 of the Political Code, so as to include other property in such class not therein enumerated. Alfalfa being a perennial plant is part of the realty and is not included in the exemption of "growing crops."

Miller vs. County of Kern, 137 Cal. 516; distinguishing *Cottle vs. Spitzer*, 65 Cal. 456.

NOTE.—Section 3617 of the Political Code was amended in 1905 so as to include alfalfa as improvements.

The exemption of land held by public agents from taxation applies to general state, county, and municipal taxes, and does not extend to its exemption from a local assessment for a street improvement, enhancing the value, if not actually used for a public purpose. The rule in this state is that such property, when

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actually devoted to public use, is exempt from assessments under special laws, otherwise not.

City Street Improvement Company vs. Regents of the State University of California, 153 Cal. 776; citing *Estate of Royer*, 123 Cal. 614.

Timber lands which have reverted to the state for the nonpayment of the cash price are not subject to taxation.

Kleinsorge vs. Burgbacher, 6 Cal. App. 346; citing *People vs. Doe*, 36 Cal. 222; *Low vs. Lewis*, 46 Cal. 549; *People vs. Austin*, 47 Cal. 360.

The grant by the United States of lands in lieu of the sixteenth and thirty-sixth sections lost to the state was not *in praesenti*, and could not vest title until such lieu lands were listed from the United States to the state; and a state certificate of purchase of lieu land vests no title, legal or equitable, prior to the approval of the selection by the United States, and if the selection is rejected there is no possibility of title under such certificate.

Slade vs. County of Butte, 14 Cal. App. 453; citing *Roberts vs. Gebhart*, 104 Cal. 67; *Roberts vs. Gebhart*, 138 Cal. 202; *Allen vs. Pedro*, 136 Cal. 1.

Certificates of purchase of lieu lands, apart from the land, which convey no title thereto, legal or equitable, are not taxable as property.

Slade vs. County of Butte, 14 Cal. App. 453; citing *People vs. Donnelly*, 58 Cal. 144; *People vs. Frisbie*, 31 Cal. 146.

A reclamation district is a public agency of the state; and property acquired thereby, which is indispensable to the execution of its objects, is public property of the state, within the meaning of the constitution, and is exempt from state and county taxes as such.

Reclamation District No. 551 vs. County of Sacramento, 134 Cal. 477; citing *People vs. Reclamation District No. 551*, 117 Cal. 114; *Hensley vs. Reclamation District No. 556*, 121 Cal. 96; *County of Kings vs. County of Tulare*, 119 Cal. 509.

Under the provisions of section 1 of article XIII of the constitution, *as it stood prior to the amendment of 1914*, property acquired by the city and county of San Francisco outside of its territorial limits for the purpose of building, constructing, operating, and maintaining a municipal water works and supply for the benefit of said city and county and the inhabitants thereof, and incidentally to supply water, light, and power to cities outside of such municipality, is exempt from taxation, and *mandamus* will lie to compel the cancellation of assessments of such property for taxes and sales made for nonpayment of any taxes levied against it.

City and County of San Francisco vs. McGovern et al., 28 Cal. App. 491.

Where a contract for the sale of real property belonging to a religious corporation, and used exclusively for religious purposes, provides that the church is to retain the possession of the property for a designated period upon the payment of a stipulated rate of interest upon the paid-up installments of the purchase price in lieu of rent, the beneficial ownership of the property is in the vendee pending the payment of the remainder of the purchase price, and the church's use and occupation is in effect that of a tenant, and consequently the property is not exempt from taxation under the provisions of section 1½ of article XIII of the constitution.

Havens vs. County of Alameda, 30 Cal. App. 206.

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XXXIII. Equalization.

XXXIII. Equalization.

A board of equalization has no power to increase an assessment fixed by the assessor without notice to the owner. The publication of a general notice of sittings of the board is not such notice. If the board raise the assessment without proper notice to the owner, their action is void, and the assessment remains in full force.

Patten vs. Green, 13 Cal. 325.

The presumption of law is that a board of equalization perform their duty and correct irregularities in the assessments.

Guy vs. Washburn, 23 Cal. 111.

Under the revenue act of 1861 a complaint was necessary before a board of equalization could increase or diminish an assessment fixed by the assessor.

People vs. Reynolds, 28 Cal. 107.

A board of equalization of a county can not add to the assessment roll other property than that assessed by the assessor. The board may require the assessor to enter on the assessment roll other property which has not been assessed; but when entered by the assessor, he and not the board must give it a proper valuation. The board can not add to the valuation fixed by the assessor, without evidence authorizing them to do so. If the assessor fixes the assessed value of the property, and the board of equalization afterwards, instead of adding to the valuation of the property so assessed, makes a new assessment, this assessment is void, even if the party interested receives notice and appears and evidence is taken. An order of the board of equalization adding to the assessed valuation of a person's property should show upon its face that it is merely increasing the valuation of the particular property placed on the assessment roll by the assessor.

People vs. Reynolds, 28 Cal. 107.

To give the board of equalization jurisdiction to increase the valuation of property beyond the amount at which it has been assessed, the filing of a complaint is necessary.

People vs. Goldtree, 44 Cal. 323; citing *People vs. Reynolds*, 28 Cal. 107; ,

People vs. Flint, 39 Cal. 670.

NOTE.—This decision is under one of the old revenue acts.

Under section 3673 of the Political Code a county board of equalization has jurisdiction to raise any individual assessment, without having before it any complaint or affidavit that such assessment is too low and asking that it be raised.

Allison Ranch Mining Company vs. County of Nevada, 104 Cal. 161.

The board of equalization has no jurisdiction or power to reduce any assessment except upon a verified written application.

Garretson vs. Board of Supervisors, Santa Barbara County, 61 Cal. 54. But see *Allison Ranch Mining Co. vs. County of Nevada*, 104 Cal. 161.

The statutes do not require a board of equalization to take down or preserve the evidence taken before them in equalization matters.

Central Pacific Railroad Company vs. Board of Equalization, Placer County, 32 Cal. 582.

The law does not require the testimony of witnesses before the board of supervisors to be reduced to writing; and in the absence of such requirements, it must be presumed that the applicants were examined in accordance with section 3675 of the Political Code.

Garretson vs. Board of Supervisors, Santa Barbara County, 61 Cal. 54.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

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XXXIII. Equalization.

The evidence taken before the board of equalization is not required to be set out in the minutes, and such evidence can not be regarded as something apparent upon the face of the record because set out in the petition for a writ of review.

Farmers' and Merchants' Bank of Los Angeles vs. Board of Equalization of Los Angeles, 97 Cal. 318.

When a board of equalization holds its session on the first and last day of a two weeks' session prescribed by law, it is sufficient.

People vs. McCreery, 34 Cal. 432.

If an assessment be too high, it is not therefore void, but it is merely an over-valuation, which a board of equalization will correct upon proper application.

People vs. Arguello, 37 Cal. 524.

The payment of a tax can not be resisted on the ground that the property on which it was levied was not assessed at its true value. One whose property is not assessed according to its true value must apply to the board of equalization.

People vs. Whyler, 41 Cal. 351.

A board of equalization in passing upon the question whether an assessment is too high or too low, acts in a judicial capacity and its decision is an adjudication.

People vs. Goldtree, 44 Cal. 323.

A board of equalization has no power to cancel an assessment for taxes placed by the assessor upon the assessment roll.

People vs. Board of Supervisors, San Francisco, 44 Cal. 613;

People vs. Asbury, 44 Cal. 616.

In *Savings and Loan Society vs. Austin et al.*, 46 Cal. 415, it was held that the legislature had the power to create a state board of equalization (Wallace, C. J., and Niles, J., dissenting), and that such board had the power to fix the state rate of taxation.

Savings and Loan Society vs. Austin, 46 Cal. 415.

A refusal of the board of equalization to reduce the assessed value of property, made on a complaint by the party assessed, does not preclude the board from afterwards raising the assessed value, upon a complaint made that it has been assessed too low.

Central Pacific Railroad Company vs. Board of Equalization, Placer County, 46 Cal. 667.

The state board of equalization, created by the adoption of the codes 1871-72, shorn of its power to equalize assessments by raising or lowering of entire rolls.

Houghton vs. Austin, 47 Cal. 646.

If a board of equalization raises the assessed value of a taxpayer without having acquired jurisdiction to do so, the taxpayer must still pay the tax upon the value of his property as assessed.

Los Angeles vs. Los Angeles City Water Works, 49 Cal. 638.

A board of equalization has no power to strike out from an assessment, made by the assessor, property assessed by him.

People vs. Board of Supervisors, San Francisco, 50 Cal. 282; citing *People vs. Asbury*, 46 Cal. 523.

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A board of equalization of taxes does not exceed its jurisdiction by refusing to accede to an application to reduce the assessed valuation of property.

People vs. Board of Supervisors, San Francisco, 50 Cal. 282; citing *Central Pacific Railroad Co. vs. Placer County*, 43 Cal. 365.

The state board of equalization has not the power to increase or lower any individual assessment; nor has a county board the power to increase or lower the entire assessment roll.

Wells, Fargo & Co. vs. State Board of Equalization, 56 Cal. 194.

NOTE.—This decision is by a divided court, but is adhered to as a correct interpretation of the constitution.

Prior to the amendment of section 9 of article XIII of the constitution in 1884, under an order of the state board of equalization to raise or lower a county roll, such order applied to mortgages, deeds of trust, contracts, etc., but did not apply to assessments of money.

People vs. Dunn, 59 Cal. 328.

Section 9 of article XIII of the constitution, so far as it relates to the state board of equalization, has reference to equalization "between counties," and the same is true of subdivision 9 of section 3692 of the Political Code.

San Francisco and North Pacific Railroad vs. State Board of Equalization, 60 Cal. 12.

The state board of equalization has not the power to increase or lower any individual assessment.

San Francisco and North Pacific Railroad vs. State Board of Equalization, 60 Cal. 12; citing *Wells, Fargo & Co. vs. State Board of Equalization*, 56 Cal. 194.

Section 9 of article XIII of the constitution, relating to equalization of county assessment rolls, has no relation to the assessments of property of railroad corporations operated in more than one county, and assessed by the state board of equalization.

Central Pacific Railroad Company vs. State Board of Equalization, 60 Cal. 35.

By the several provisions of the Political Code, the power to act on each and every assessment is conferred on the board, and to increase or lower it so as to make it conform to the true value in money of the property mentioned therein, and the board has full power to act on the assessment of the franchise, and increase or lower it as provided in section 3673 of the Political Code.

Spring Valley Water Works vs. Schottler, 62 Cal. 69.

In this case the board of supervisors, in the exercise of its power of equalization, assessed the franchise of the waterworks by taking the aggregate of the market value of the shares of stock of the company, on a certain date, and deducting therefrom the value of the real and personal property of the company, and held the difference to be the value of the franchise. The market value of the shares was shown to the board by the testimony of witnesses. Held, that this mode of arriving at the value of the franchise is within the power vested in the board of supervisors acting as a board of equalization.

Spring Valley Water Works vs. Schottler, 62 Cal. 69; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *San Jose Gas Co. vs. January*, 57 Cal. 614.

The action of the state board of equalization in raising the assessment roll of a county under section 9 of article XIII of the constitution, operates upon mortgage assessments.

Schroeder vs. Grady, 66 Cal. 212; citing *People vs. Dunn*, 59 Cal. 328.

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The state board of equalization has power to increase or lower the assessment roll of a county so as to affect taxes for county purposes.

Baldwin vs. Ellis, 68 Cal. 495.

A property owner who, upon demand made by the assessor, refuses to give under oath a statement of his assessable property, can not have the valuation of the assessor reduced by the county board of equalization.

Modoc County vs. Churchill, 75 Cal. 172.

A notice of intention to increase an assessment may be served by mail and proof of such mailing may be established by oral testimony.

Hagenmeyer vs. Board of Equalization, Mendocino County, 82 Cal. 214.

In serving notice by a board of equalization of the intention to increase an assessment, the time for appearance is to be computed as including the date of the notice.

Hagenmeyer vs. Board of Equalization, Mendocino County, 82 Cal. 214; citing *Misch vs. Mayhew*, 51 Cal. 516; *Spring Valley Water Works vs. Schottler*, 62 Cal. 103; *Patten vs. Green*, 13 Cal. 330.

When the record does not show by affirmative proof that the board of equalization did not act upon evidence before it, its order increasing an assessment after due notice to the party whose interests are affected is conclusive that it did act upon such evidence as was necessary.

Hagenmeyer vs. Board of Equalization, Mendocino County, 82 Cal. 214; citing *Humboldt County vs. Dinsmore*, 75 Cal. 604, 607, 608.

An order of a board of equalization finding that a bank had returned a false and incomplete statement of its taxable property, and that it should be assessed in a specified sum for its solvent credits, and ordering the assessor to add to the assessment for solvent credits the sum found to have been omitted, is not an attempt by the board to add other property to the assessment roll, or to exercise assessorial powers; and it is no objection to the order that it states the value of the item to be added, instead of simply directing the assessor to add the property to the list and assess its value. The assessment of solvent credits must necessarily be at their face value, and to describe such property is to fix its value.

Farmers' and Merchants' Bank of Los Angeles vs. Board of Equalization of Los Angeles, 97 Cal. 318; citing *Biddle vs. Oaks*, 59 Cal. 94; distinguishing *Wells, Fargo & Co. vs. Board of Equalization*, 56 Cal. 194; *People vs. Sacramento County*, 59 Cal. 321; *People vs. Dunn*, 59 Cal. 328; *People vs. Hastings*, 29 Cal. 449; and *People vs. Reynolds*, 28 Cal. 107.

Section 3681 of the Political Code, enabling and requiring the assessor, at the request of the board of equalization, to list and assess property which he has failed to assess, simply extends the power of the assessor, and is not in conflict with the provisions of the constitution defining the powers and duties of the state and county boards of equalization; but the exercise of the power granted by such section is directly in accord with section 1 of article XIII of the constitution, which requires all property not exempt from taxation to be taxed.

Farmers' and Merchants' Bank of Los Angeles vs. Board of Equalization of Los Angeles, 97 Cal. 318.

Boards of equalization should not be held to very strict rules in the matter of keeping the minutes of their proceedings, and if, under a rule or order of such board, a party has notice of its intended action in regard to the assessment of his property, in time to have a full and fair hearing during the sessions of the board, such notice

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will be held sufficient, unless it appears affirmatively that a full and fair hearing was denied him by the action of the board.

Allison Ranch Mining Company vs. County of Nevada, 104 Cal. 161; citing *Spring Valley Water Works vs. Schottler*, 62 Cal. 103; *Patten vs. Green*, 13 Cal. 330.

The mode which the statute prescribes for the revision of the assessment is the measure of the power, and, unless that mode is followed, any attempted revision will be nugatory.

Williams vs. Bergin, 108 Cal. 166.

In proceedings of quasi-judicial bodies, the giving of proper notice is one of the main elements to confer jurisdiction, particularly in the revision and equalization of assessments.

Williams vs. Bergin, 108 Cal. 166;

Lower Kings River Reclamation Dist. vs. Phillips, 108 Cal. 306.

Proceedings for street assessments, being *in invitum* must, in order to charge the property of the owner, be based upon a compliance with the provisions of the statute, authorizing the assessment in so far, at least, as those provisions have to do with the giving of notice or other steps precedent to the jurisdiction of the board to order the work done.

Haughawout vs. Percival, 161 Cal. 491.

The state board of equalization can not delegate to its clerk authority to issue orders prolonging the time of the session of the county board of equalization; but nevertheless equalization made by the county board after the expiration of the time limited by section 3672 of the Political Code, and within the limit to which it might have been extended by the state board, is not void, and the limit of time fixed by that section must be regarded as directory, under the general rule of judicial interpretation, and also under the terms of section 3885 of the Political Code, which has the effect to transform that general rule into a matter of positive law.

Buswell vs. Board of Supervisors of Alameda County, 116 Cal. 351.

A county board of equalization, after the lapse of the time to which it can be extended by the state board of equalization, has no jurisdiction to raise an assessment, and its order assuming to raise an assessment thereafter is void.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545; *Savings Bank of St. Helena vs. County of Napa*, 17 Cal. 674.

The question of the legality of revision of assessments, after lapse of time prescribed by law in which to equalize, raised but not decided.

Lahman vs. Hatch, 124 Cal. 1.

In all reclamation assessments, the property owner is entitled to a hearing thereon at one time or another on the question of benefits.

Lower Kings River Reclamation District No. 531 vs. McCullah, 124 Cal. 175; citing *Reclamation District vs. Evans*, 61 Cal. 104; *Lower Kings River Reclamation District vs. Phillips*, 108 Cal. 306.

Under the drainage act (Stats. 1885, p. 204; 1891, p. 262; 1909, p. 25) the action of the board of equalization in adjusting an assessment is not conclusive upon the landowners, but is subject to review by the courts.

Payne vs. Ward, 23 Cal. App. 492; citing *Lower Kings River Reclamation District vs. Phillips*, 108 Cal. 306.

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The state board of equalization is a limited tribunal having limited jurisdiction, and has only such powers as are expressly conferred upon it by statute.

County of Colusa vs. County of Glenn, 124 Cal. 498; citing *Finch vs. Tehama County*, 29 Cal. 457; *County of Modoc vs. Spencer*, 103 Cal. 498. See, also, *Colusa County vs. Glenn County*, 117 Cal. 434.

A board of equalization acts judicially in raising or lowering an assessment, and has no arbitrary power of assessment or reassessment. It can not act without a hearing upon notice given to the person assessed, nor change an assessment made by the assessor without evidence adduced before it authorizing such change. And where an assessment has been made by the assessor and the taxes levied thereon have been paid the board of equalization has no power to disturb such assessment without any evidence adduced before it as to the value of the property assessed.

City of Oakland vs. Southern Pacific Company, 131 Cal. 226; citing *People vs. Goldtree*, 44 Cal. 323; *San Francisco vs. Flood*, 64 Cal. 508; *Hagenmeyer vs. Board, etc., Mendocino County*, 82 Cal. 218; *Farmers, etc., Bank vs. Board of Equalization*, 97 Cal. 325; affirming *People vs. Reynolds*, 28 Cal. 112.

In discharging its duties of equalization a board exercises judicial functions, and its decision as to the value of the property and the fairness of the assessment so far as amount is concerned constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question, which abrogates and takes the place of the judgment of the assessor upon that question.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

Where the only alleged effect of the fraud of the assessor is the excessive valuation of the property of the taxpayer for assessment purposes, the conclusion of the board of equalization that the fair value for such purposes is the amount fixed by the assessor renders the fraud of that officer immaterial, for it is in no way injurious. According to such conclusion of the board, the property is assessed at the same value proportionately as all the other property in the county.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

Unless that determination can be avoided, it is conclusive on the question of fairness of the valuation, and hence on the question of injury. It can not be avoided unless the board has proceeded arbitrarily and in wilful disregard of the law intended for their guidance and control, with the evident purpose of imposing unequal burdens upon certain of the taxpayers, or unless there be something equivalent to fraud in the action of the board. Mere errors in honest judgment as to the value of the property will not obviate the binding effect of its conclusion.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *La Grange, etc., Mining Company vs. Carter*, 142 Cal. 565; *California Domestic Water Company vs. Los Angeles*, 10 Cal. App. 185; distinguishing *Postal Telegraph Company vs. Dalton*, 119 Cal. 604; *Columbia Savings Bank vs. Los Angeles County*, 137 Cal. 467.

Although the evidence may warrant the conclusion of something equivalent to fraud by the assessor in the matter of the assessed valuation of property, still to enable the owner to recover the tax paid on the alleged excess valuation it must appear that the county board of equalization in some manner participated in the fraud when the matter came before it on application for reduction.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

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A neglect on the part of a taxpayer to apply to the board of equalization for relief on an alleged illegal assessment is a bar to relief by judicial action.

Columbia Savings Bank vs. County of Los Angeles, 137 Cal. 467; citing *Henne vs. County of Los Angeles* 129 Cal. 297; but see *Brenner vs. City of Los Angeles*, 160 Cal. 72.

While it is the general rule that tax proceedings and the levy and raising of assessments must be strictly construed, yet the rule should not be carried to the extent of looking solely to the record of an order made by the board of equalization. Where the board possessed the power claimed to have been exercised, and had jurisdiction of the subject-matter, and substantially followed the method prescribed by the statute, and in fact exercised the power, the court will not construe the language used by it in a resolution in a strictly technical sense, but will endeavor, by a view of the whole proceedings, to ascertain to a common certainty what was done.

La Grange, etc., Mining Company vs. Carter, 142 Cal. 560; citing *Buswell vs. Supervisors*, 116 Cal. 354; *County of San Luis Obispo vs. White*, 91 Cal. 436; *Davis vs. Pacific Improvement Co.*, 137 Cal. 250.

The board of equalization of a county possesses great powers under our constitution and statutes as to raising or lowering assessments, and, in the absence of fraud, or malicious abuse of its powers, it seems to be the sole judge of questions of fact and of values of property; and it must be presumed in all cases that, as a public official body, it has performed its duty.

La Grange, etc., Mining Company vs. Carter, 142 Cal. 560.

When the power or jurisdiction of an inferior legislative tribunal is made to depend upon the existence of a fact, its determination of the fact is not conclusive unless declared to be so in express terms or by necessary implication. And if so declared to be conclusive, the declaration or finding can operate to bind the citizen whose property is affected thereby, only in the event that at some stage of the proceedings he shall have been afforded an opportunity to be heard on the question, in short, shall have had his day in court.

San Christina Investment Company vs. City and County of San Francisco, 167 Cal. 762.

Where the determination of an interested tribunal is required to be reported to another body for correction and confirmation and opportunity is there afforded after reasonable notice to make objections on account of such interest, a failure to appear and make the objections operates as a waiver and precludes the party from afterwards raising it or claiming that the determination is for that reason void. The principle being that as the defect is not jurisdictional, because the statute does not expressly forbid such action, the objection constitutes a mere irregularity which must be urged at the hearing provided for that purpose the same as any other objection to the regularity or fairness of the assessment.

United Real Estate and Trust Company vs. Barnes, 159 Cal. 242.

Under section 3681 of the Political Code, the board of equalization may authorize changes in the assessment roll, not only to add a new assessment, but also to correct the description of property already assessed with an insufficient and incomplete description, and may empower the assessor to change the description of the kind or quality of part of the personal property.

Savings and Loan Society vs. City and County of San Francisco, 146 Cal. 673; citing *Farmers, etc., Bank vs. Board of Equalization*, 97 Cal. 318, 323; *San Francisco vs. Flood*, 64 Cal. 504.

Section 3885 of the Political Code provides that "no assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the

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same was not completed within the time required by law," and this section is applicable to proceedings before the board of supervisors, sitting as a board of equalization.

Savings and Loan Society vs. City and County of San Francisco, 146 Cal. 673; citing *Buswell vs. Supervisors*, 116 Cal. 351; *LaGrange, etc., Mining Co. vs. Carter*, 142 Cal. 560.

As to matter concerning which the action of a board of equalization is conclusive, there is no power of review anywhere, even in an action to recover the taxes paid under protest.

Farmers' and Merchants' Bank of Los Angeles vs. City of Los Angeles, 151 Cal. 655.

Where a taxpayer had appealed to the county board of equalization to correct alleged inequalities in assessments, the refusal of the board to reduce the assessments is, in the absence of fraud, conclusive upon the courts.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; distinguishing *Los Angeles Gas and Electric Company vs. County of Los Angeles*, 162 Cal. 165.

A city council has power, in aid of its work of equalization of city assessments in case of undervaluation, to make a special contract for an abstract of the city assessment roll, with comparisons with the county assessment roll, and with maps and other data and information relevant to undervaluation not included in the information required from the city assessor, and to order the compensation therefor paid out of the city treasury.

Mauer vs. Weatherby, 1 Cal. App. 243.

Where a board of trustees of a city has duly elected, under the terms of the act of March 27, 1895, to make use of the county officers in the matter of the levy and collection of taxes for city purposes, property computed upon the assessed valuation of the city property, as equalized by the board of supervisors, the city taxes so equalized, can not be affected by a subsequent change in the assessed value of such property for state and county purposes, by the state board of equalization.

Madary vs. City of Fresno, 20 Cal. App. 91; distinguishing *Baldwin vs. Ellis*, 68 Cal. 495.

It is not the intent and purpose of the act of 1895, to merge and confound city and county business, by reason of the election of the board of trustees thereunder, to use the county officers in assessing and collecting city taxes. In discharging the duties of city assessor, city tax collector, and city treasurer, the respective county officers or are *ex officio* officers of the city.

Madary vs. City of Fresno, 20 Cal. App. 91.

Plaintiff sued for taxes upon \$101,605 solvent credits. The court found the solvent credits subject to taxation to be \$71,756, and no more. The question presented, therefore, is whether the remedy of the taxpayer is by an appeal to the board of equalization for a reduction of the amount of assessment, failing in which he is liable for the full amount, or whether he can raise this question as a defense to an action to recover the tax. The determination of a board of equalization with reference to all matters upon which they are competent as a board to pass, and within their jurisdiction as such board, is final and conclusive, and where a remedy is given by an application as this board, that is ordinarily the only remedy, and a failure to follow that remedy concludes the property holder. In *People vs. Dunn*, 59 Cal. 340, it was held by the supreme court that while money could not be assessed at more than its face value, solvent credits might properly be assessed at a higher valuation than the face of the obligation. It would, therefore, follow that the case at bar presents a case of overvaluation rather than the

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assessment of non-existing property, and that the remedy was an appeal to the board of equalization, failing in which the party can not now complain.

City of Los Angeles vs. Glassell, 4 Cal. App. 43; citing *Columbia Savings Bank vs. Los Angeles*, 137 Cal. 467; *Henne vs. Los Angeles County*, 129 Cal. 297. But see *Brenner vs. City of Los Angeles*, 160 Cal. 72.

The scheme for the correction and equalization of assessments under the various sections of our Political Code comprehends that, after notice to the taxpayer, as by the rules of the board established, the supervisors of the county, sitting as a board of equalization, under section 3673, may increase or lessen any assessment contained in the roll so as to equalize such assessment and to make it conform to the true value of the property in money. By section 3679, the board is authorized to require the assessor to enter omitted property, and by section 3681, to make and enter new assessments, when any assessment made by the assessor is deemed by the board to be so incomplete as to render the collection of taxes doubtful. This last section provides that before such action, notice must be given by the clerk to the parties interested at least five days before the taking of such action. But this notice is not requisite where the parties appear before the board of equalization, and being before the board, invoke its powers and authority to correct the assessment originally entered against it.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185; citing *Farmers, etc., Bank vs. Board of Equalization*, 97 Cal. 325; *Savings and Loan Society vs. San Francisco*, 146 Cal. 673.

The action of the board of equalization is conclusive. To these boards of revision by whatever name they may be called, the citizens must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in character. They pass judgment upon the value of property upon personal examination and evidence respecting it. Their action being judicial, their judgment in cases within their jurisdiction is not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

In the absence of fraud or malicious abuse of its powers, the board of equalization is the sole judge of questions of fact and of the values of property.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185; citing *LaGrange, etc., Mining Co. vs. Carter*, 142 Cal. 565.

Money paid under protest for taxes on property not liable to assessment may be recovered, notwithstanding no application is made for correction of the assessor's error before the period of equalization fixed by law has passed.

Brenner vs. City of Los Angeles, 160 Cal. 72; overruling *Henne vs. County of Los Angeles*, 129 Cal. 297.

Where the refusal of a witness to answer questions before the board of equalization was reported to the superior court as a contempt, and an attachment for contempt was issued, before the hearing of which the board of equalization had finally adjourned, whereupon the presiding judge of the superior court made an order discharging the writ, on the ground that it was no longer possible to compel the witness to answer the questions, the order discharging the writ, however erroneous it may be, can not be annulled on *certiorari*.

The People vs. Latimer, 160 Cal. 716.

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There is no statute making it a misdemeanor to refuse to answer before the board of equalization, and if there were such statute, the misdemeanor could only be prosecuted and punished in the name of the people.

The People vs. Latimer, 160 Cal. 716.

The municipal corporation act provides that as to cities of the fourth class the "session of the (equalization) board shall be held from time to time, as in its notice specified, for the period of two weeks and no longer," while there is no such limitation prescribed as to cities of the fifth and sixth class. The direction as to these is, that the board "shall remain in session from day to day until all of the returns of the assessor have been rectified." In the absence of any other legislation on the subject, the board of equalization would probably be authorized to determine the length of time necessary to rectify the returns, and their determination, in the absence of fraud, would be conclusive. Further, it might be conceded that the acts of the board while in session beyond the two weeks limit are not void, and that the ordinance is subject to the provisions of section 3885 of the Political Code declaring that "no act relating to assessment * * * is illegal * * * because the same was not completed within the time required by law."

White vs. Mitchell, 11 Cal. App. 202; citing *Payne vs. San Francisco*, 3 Cal. 122; *Buswell vs. Supervisors*, 116 Cal. 351.

Under the constitutional provision that no person shall be deprived of his property except by due process of law, it is not within the power of the legislature to confer upon a city council, or other local body, the authority to create local assessment districts for taxation to pay for local improvements, without some provision for notice to the persons interested and a hearing upon the question of the limits of the district and the exclusion of their property therefrom, if it is found not to be benefited thereby. Such an act, making no provision for such notice, is unconstitutional and void.

Brookes vs. City of Oakland, 160 Cal. 423.

The legislature itself has the power to fix by statute the limits of a local taxing district, such as a sewer district embracing a portion of a municipality, without a formal notice or hearing, and when it has done so, the courts will not inquire into the matter of a hearing before the legislature, nor into the legislative decision, as to the property benefited and properly included in the district, but will regard that determination as final and conclusive. Where, however, the legislature commits the determination of that question to some local tribunal, at some stage in the proceedings, in order to constitute due process of law, the landowner must be accorded a hearing upon the question whether or not his land is benefited by the proposed public improvement, and whether or not it shall be, in effect, excluded from the district, although within its territorial limits.

Brookes vs. City of Oakland, 160 Cal. 423; citing *People vs. Sacramento Drainage District*, 155 Cal. 386.

The act of February 13, 1911, providing that the city council of any city may create, within such city, separate sewer districts, whenever it may be necessary or convenient in their judgment for the proper sanitation of such district, and authorizing the issuance of bonds for the construction of sewers therein, to be paid by means of taxes levied and assessed upon the property within the district, the same to be levied, assessed, and collected in the same manner and at the same time as other taxes for municipal purposes are levied, assessed, and collected, is unconstitutional and void, for the reason that it contains no provision whatever for any notice or hearing upon the question of the limits of the sewer district, and no opportunity is afforded a property owner to be heard upon the question whether the proposed sewer will benefit his property, or the question whether his property should be included in the district to be taxed for its construction.

Brookes vs. City of Oakland, 160 Cal. 423.

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No such notice or hearing is afforded the owner of property within the proposed sewer district, by the hearing with respect to the regular annual valuation of his property by the city assessor before the city board of equalization, under sections 3673 and 3682 of the Political Code, which the city charter makes applicable to assessments for city purposes.

Brookes vs. City of Oakland, 160 Cal. 423.

The board of trustees of the city of Auburn, a municipality of the sixth class, sitting as a board of equalization, had no authority, under section 872 of the municipal corporation act and section 28 of ordinance number 6 of the city, to arbitrarily increase an assessment of property as made and returned by the city assessor, without first giving the person assessed notice in advance of their proposed action. Such a proper notice is a jurisdictional prerequisite to the right of the board of equalization to proceed at all in the matter of the raising of assessments.

Huntley vs. Board of Trustees of the City of Auburn, 165 Cal. 298.

A notice to the person assessed, dated September 11, 1911, after the assessment had actually been raised, reading, "the assessment of your property has been raised by the city board of equalization as follows: (giving description of property, amount of original assessment in numbers and the amount to which the assessment had been raised in numbers). The board of equalization will be in session at eight p. m., September 25, 1911, at the city offices, to adjust all assessments where cause is shown," is insufficient to give the board jurisdiction of the matter of raising such assessment.

Huntley vs. Board of Trustees of the City of Auburn, 165 Cal. 298.

Such a notice can not, in connection with other minutes of the board, of which the property owner had no knowledge and with which he was not charged with notice, be construed as a mere notification that the board proposed to raise the assessment and would hear evidence upon the matter pro and con on the future date specified in the notice.

Huntley vs. Board of Trustees of the City of Auburn, 165 Cal. 298.

In the matter of raising assessments by a board of equalization notice is jurisdictional to the right of the board to proceed. Such notice must be a notice of the intended action of the board, and, in the absence of a controlling statute fixing the time of notice the property owner must be given time to have and must have a full and fair hearing.

Huntley vs. Board of Trustees of the City of Auburn, 165 Cal. 298; citing *Allison, etc. Mining Company vs. County of Nevada*, 104 Cal. 161; *Farmers, etc., Bank vs. Board of Equalization*, 97 Cal. 325; *LaGrange, etc. Mining Company vs. Carter*, 142 Cal. 562; *Savings and Loan Society vs. San Francisco*, 146 Cal. 679; *Spring Valley Water Works vs. Schottler*, 62 Cal. 103.

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So vast is the power of taxation and so readily does it yield to passion, excitement, prejudice, or private schemes, and so frequently is its execution committed to incompetent hands, that any stretch of power on the part of the legislature which authorizes the tax, or of the ministerial officers who levy or execute it, should be unhesitatingly opposed and condemned.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278.

The taxing power is an incident of sovereignty, the exercise of which belongs exclusively to the state, and attaches alike upon everything which comes within its jurisdiction.

People vs. Coleman, 4 Cal. 46.

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The power of taxation was granted to the legislature without limit, for all purposes allowed by the constitution; but if the legislature has no right to create a state debt, beyond the limit fixed by the constitution, it has no right to tax the people to pay a void debt.

Nougués vs. Douglas, 7 Cal. 65.

People vs. Seymour, 16 Cal. 332.

Any attempt on the part of the state, or of one of its subdivisions, to take the property of an individual for public purposes by way of taxation, must find an express statutory warrant, and all laws having this object are to be construed strictly in favor of the individual as against the state.

Connelly vs. City and County of San Francisco, 164 Cal. 101; citing *Merced County vs. Helm*, 102 Cal. 165.

All provisions of the statutes for the assessment and sale of property must be strictly followed.

Russell vs. Mann, 22 Cal. 131.

The constitution vests in the legislature the power of taxation and authority to determine objects for which such power shall be exercised, and there is no restriction upon this power.

People vs. Pacheco, 27 Cal. 175.

The power of taxation is a necessary incident of sovereignty, and under our system of government it pertains to the legislative department.

People vs. McCreery, 34 Cal. 432.

The power of the legislature over the whole subject of taxation, including the property to be charged, the amount of the tax, the mode of levying, assessing, and collecting it, is as ample as over any other matter that is a proper subject of legislative action.

People vs. McCreery, 34 Cal. 432.

The legislature may, in strict conformity with its constitutional powers and duties, recognize a moral obligation as the sole basis for the imposition of taxes.

Beals vs. Board of Supervisors, Amador County, 35 Cal. 624; citing *Blanding vs. Burr*, 13 Cal. 350.

The provisions of the constitution and revenue laws upon the subject of taxing property are to be understood as referring to private property and persons only, and not as including public property and the state or any subordinate part of the state government, such as counties, towns and municipal corporations. The state has in no manner provided for taxing itself or its own property, nor has the state authorized suits to be instituted by itself against itself, or its property, for the collection of any tax.

People vs. Doe G. 1034, etc., 36 Cal. 220.

The principle upon which taxation is to be imposed by the state is pointed out by the constitution; but the extent to which it may be carried is left unlimited, except by legislative discretion.

Stockton and Visalia Railroad Company vs. Common Council of Stockton, 41 Cal. 147.

The taxing power, whether it be asserted in the form of general taxation, or of local assessment, can not be upheld, when the purpose in view can be judicially seen to be other than public.

Matter of opening and grading Market Street, 49 Cal. 546; citing *Taylor vs. Palmer*, 31 Cal. 254.

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XXXIV. *Taxation. Power of.*

The legislature has power to levy a tax upon all the property in the state, either before or after the value of the property is ascertained. The provision of the constitution requiring that "all property in the state shall be taxed in proportion to its value, to be ascertained as directed by law," does not require the value to be found after the rate of taxation is fixed.

People vs. Latham, 52 Cal. 598.

The legislature has no power to impose taxes for the benefit of individuals connected with a private enterprise, even though the private enterprise might benefit the local public in a remote or collateral way.

People vs. Parks, 58 Cal. 624.

The authority conferred under street improvement acts subjecting the property of a lot owner to a lien for his proportionate payment of an improvement, and providing further for a sale of his property assessed for delinquency in the payment, proceeds from the taxing power of the state, and the same general principles apply in the case of proceedings to enforce an assessment levied under such improvement acts as apply to the enforcement of ordinary tax liens.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

Tax proceedings are *in invitum*, and to be valid must be in strict accordance with the statute. Without an assessment, all subsequent proceedings are nullities, and in making the assessment the provisions of the statute under which it is to be made must be observed with particularity.

Lake County vs. Sulphur Bank Q. M. Co., 66 Cal. 17; citing *Moss vs. Shear*, 25 Cal. 46; *People vs. Mahoney*, 55 Cal. 288. See, also, *Lake County vs. Sulphur Bank Q. M. Co.*, 68 Cal. 14.

All proceedings in the nature of assessing property for purposes of taxation, and in levying and collecting taxes thereon, are *in invitum*, and must be *stricti juris*.

Weyse vs. Crawford, 85 Cal. 196.

Tax proceedings, being *in invitum*, must comply strictly with all the requirements of the statute imposing them; and in order to collect a tax, the government or agency seeking to recover must show the fulfillment of all the conditions upon which the obligation to pay the tax depends.

McDougald vs. Boyd, 172 Cal. 753.

The power of the legislature in the matter of taxation is unlimited, except as restricted by constitutional provisions, and extends to the providing of assessments for local improvements, upon any basis of apportionment which the legislature may select; and the apportionment does not depend upon the fact of any special local benefit to the taxpayer.

In re Madera Irrigation District, 92 Cal. 296.

The power of taxation is authorized for the benefit of the taxpayer, and taxation can not be justly compelled for an object or for the benefit of a class in which the taxpayer is directly excluded from participating.

Hughes vs. Eicing, 93 Cal. 414.

The question of the power of the legislature, in a proper case, to impose a burden in the nature of a tax upon specific lands, in proportion to the estimated special benefits which those lands will receive from the work done, may not be doubted. The limitation upon its power, it is well settled, is this, that to sustain such a law it must appear that the character of the work is such that its performance

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confers some general benefit on the public as well as a private benefit on the land owner.

People vs. Sacramento Drainage District, 155 Cal. 373; citing *Hager vs. Yolo County*, 47 Cal. 222.

The question whether or not an act operates to deprive persons of property without due process of law, in contravention of the fourteenth amendment of the constitution of the United States, is a federal question, upon which the decisions of the supreme court of the United States are the controlling authority.

Brookes vs. City of Oakland, 160 Cal. 423.

The power to levy an assessment or impose a liability on private property is derived solely from the statute, and must be exercised in the manner laid down in the statute. In this sense, the jurisdiction of the board (irrigation) extends only to the right to act in the manner prescribed by the statute. But with respect to any steps which are not constitutionally necessary, the legislature may, in the very act which requires the "jurisdictional" steps to be taken, declare that unless objection is made at a certain time or in a certain way, a failure to take these steps shall not affect the validity of the proceedings.

Imperial Land Company vs. Imperial Irrigation District, 173 Cal. 660.

The legislative attempt to validate a tax levied by a pretended corporation having no legal authority over the property taxed would, if given effect, be equivalent to the imposition of an obligation by statute without due process of law.

The People vs. Van Nuys Lighting District, etc., 173 Cal. 792.

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The tax is a debt due from the property holder to the state.

Moore vs. Patch, 12 Cal. 265;

People vs. Seymour, 16 Cal. 332.

NOTE.—But see *People ex rel. Burke vs. Badlam*, 57 Cal. 594.

The words "taxation" and "taxed," in section 13 of article XI of the constitution (of 1849), relate to such general taxes upon all property as are levied to defray the ordinary expenses of the state, county, town, and municipal governments, and not to assessments levied to pay street improvements.

Emery vs. San Francisco Gas Company, 28 Cal. 345.

The charge imposed by the license-tax acts is not a tax upon "property" within the meaning of that word as used in section 1 of article XIII of the state constitution. It is merely an annual charge or excise imposed by the state for the privilege obtained from it of being and continuing to exist as a corporation.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

The words "taxation" and "assessment," used in the constitution (of 1849), do not have the same signification. The "power" of taxation is a power which the legislature takes, from the law of its creation, to impose taxes upon property for support of the government. The word "assessment" represents those local burdens imposed by municipal corporations for street improvements. The power of "assessment" can not be exercised as an independent or principal power like that of "taxation," but must be used as an incident of the power of organizing municipal corporations.

Taylor vs. Palmer, 31 Cal. 240;

Emery vs. San Francisco Gas Co., 28 Cal. 345.

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The word "property" is used in the constitution in its ordinary and popular sense, and includes not only visible and tangible property, but also choses in action, such as solvent debts secured by mortgage, etc.

People vs. Eddy, 43 Cal. 331.

The fact that a statute widening a street designates as a "tax" that which in its elements is an "assessment," does not make it a "tax." The question whether it is a "tax" or "assessment" must be decided by the nature of the imposition.

People vs. Austin, 47 Cal. 353.

A charge imposed by law upon the assessed value of all property, real and personal, is a *tax*, and not an *assessment*, although the purpose be to make a local improvement on a road.

Williams vs. Corcoran, 46 Cal. 553; citing *People vs. Whyler*, 41 Cal. 351; *Taylor vs. Palmer*, 31 Cal. 251.

The word "assessment" is used throughout our revenue law as meaning something entirely different from "tax," and where the tax is referred to it is referred to as "tax" or "taxes."

Campbell vs. Shafer, 162 Cal. 206.

There is a broad and well recognized distinction between a tax levied for the general public good and without special regard to the benefit conferred upon the individual or property subject to the tax, and a special assessment levied to force the payment of a benefit, of value corresponding and equal to the amount of the assessment upon the property.

City Street Improvement Company vs. Regents of the University of California, 153 Cal. 776; affirming *San Diego vs. Linda Vista Irrig. Co.*, 108 Cal. 189.

While in the broad sense of the term the word "tax" may be construed to include special assessments made to pay for improvements upon streets, or for the opening thereof, yet such is not the ordinary and usual meaning of the word. In the ordinary course of business that word is used to refer to ordinary taxes assessed upon property for state, county, or city purposes, and not to designate street assessments for public improvements.

Alderson vs. Houston, 154 Cal. 1.

The state poll tax authorized to be levied and collected by the legislature under section 12 of article XIII of the constitution, and which is required to be paid when collected into the state school fund, is a state tax.

Alameda County vs. Dalton, 148 Cal. 246; affirming *San Luis Obispo vs. Felts*, 104 Cal. 64.

An assessment, as distinguished from a tax, is a special or local charge or imposition upon property in the immediate vicinity of municipal improvements, predicated upon the theory of benefits from such improvements, and levied as a charge upon land or property specially benefited thereby, while a charge imposed by law upon the assessed value of all property, real and personal, in a district, is a tax, and not an assessment, although the purpose be to make a local improvement.

Halley vs. County of Orange, 106 Cal. 420; citing *Williams vs. Corcoran*, 46 Cal. 553; *Taylor vs. Palmer*, 31 Cal. 241. Distinguished in *Nickey vs. Stearns Rancho Co.*, 126 Cal. 150.

Wells, pumping machinery and pipe-lines on water-bearing lands, together with such lands, constitute "real estate" within the definition of that term as used in the revenue act, which includes "the possession of claimants, ownership of right

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to the possession of land," and all of such property should be assessed and taxed as real estate.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

The tax levied by Levee District No. 1 of Sutter County to pay the principal and interest on an outstanding bonded indebtedness of the district *is a tax* and not an assessment for benefits.

Southern Pacific Company vs. Levee District No. 1 of Sutter County, 172 Cal. 345; citing *People vs. Whyler*, 41 Cal. 351; *Williams vs. Corcoran*, 46 Cal. 553; *Williams vs. Board of Supervisors of Sutter County*, 47 Cal. 91; *Smith vs. Farrelly*, 52 Cal. 77; *City St. Imp. Co. vs. Regents, etc.*, 153 Cal. 776.

Assessments by reclamation districts do not have the character of a tax so as to be collectible by execution or levy upon the general property of the owner of the land against which the assessment is made.

Atchison, Topeka and Santa Fe Railway vs. Reclamation Dist No. 404, 173 Cal. 91.

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The constitution (of 1849) provides that all property is to be taxed, but that the legislature must prescribe the mode.

DeWitt vs. Hays, 2 Cal. 463.

An illegal imposition of a tax casts no cloud.

DeWitt vs. Hays, 2 Cal. 463.

Lands, the title to which is in dispute is no reason for the non-assessment thereof.

Robinson vs. Gaar, 6 Cal. 273.

In taxation matters, the property must be liable; if part of the tax is illegal and void, the sale is void.

Herdenburgh vs. Kidd, 10 Cal. 402.

There is a moral as well as equitable obligation to pay a tax, and the legislature has power to compel payment in face of a defective assessment, or no assessment whatever.

People vs. Seymour, 16 Cal. 332.

Personal liability and property liability distinguished.

State vs. Poulterer, 16 Cal. 514.

A lender of money is not subject to double taxation by reason of the statutory provision requiring payment of taxes on money loaned by him, and on solvent debts due him over his own indebtedness.

People vs. McCreery, 34 Cal. 432.

In a case of double taxation, to entitle a party to relief in the courts, it must appear that the tax has been once paid or tendered. Because the same subject-matter has been twice taxed, it by no means follows that both taxes are void, and that it must escape taxation.

Savings and Loan Society vs. Austin, 46 Cal. 415; citing *People vs. McCreery*, 34 Cal. 432; *People vs. Whartenby*, 38 Cal. 461; *Lick vs. Austin*, 43 Cal. 590; *People vs. Kohl*, 40 Cal. 127.

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An illegal assessment of real property imposes no obligation on the owner to pay the tax, nor does it create a lien therefor.

People vs. Pearis, 37 Cal. 259.

If a tax has been duly assessed, the owner of the property becomes personally liable for it.

City of Oakland vs. Whipple, 39 Cal. 112; citing *People vs. Seymour*, 16 Cal. 332.

It is within the power and duty of the legislature to prescribe the mode in which all property shall be assessed.

People vs. Eddy, 43 Cal. 331.

A tax is invalid if based upon an assessment not made by an assessor elected by the qualified electors for that purpose.

People vs. Stockton, etc., Railroad Company, 49 Cal. 414; citing *People vs. White*, 47 Cal. 617; *People vs. Sargent*, 44 Cal. 432; *Williams vs. Corcoran*, 46 Cal. 555.

If a tax is illegal and void a sale under it is a nullity, and a deed of property sold for such a tax conveys no title.

Low vs. Lewis, 46 Cal. 549; citing *Hardenburgh vs. Kidd*, 10 Cal. 402; *Bucknall vs. Story*, 36 Cal. 67.

A person who acquires an interest in the property of a municipality, by lease or otherwise, such interest is subject to taxation.

Los Angeles vs. Los Angeles City Water Works, 49 Cal. 638.

If any part of a tax complained of be legal, that part must be paid before the party will be heard to complain of an illegal portion.

San Jose Gas Company vs. January, 57 Cal. 614.

Section 9 of the act of March 18, 1874, authorizing the assessment for taxes in the city and county of San Francisco, after the time within which the board of supervisors can meet for the purpose of equalization, violates both the state constitution and the fourteenth amendment to the constitution of the United States, and its validity may be attacked even by one who has failed to furnish the statement to the assessor required by section 3629 of the Political Code.

People vs. Pittsburg Railroad Company, 67 Cal. 625; distinguishing *City and County of San Francisco vs. Flood*, 64 Cal. 504; *Orena vs. Sherman*, 61 Cal. 101.

Land situate within the limits of a municipal corporation, but used solely for agricultural purposes, is subject to municipal taxation.

Town of Dixon vs. Mayes, 72 Cal. 166; affirming *City of Santa Rosa vs. Coulter*, 58 Cal. 537.

An administrator is properly chargeable with the value of real property which has become lost to the estate through his neglect to pay the taxes thereon.

Estate of Herteman, 73 Cal. 545.

To make a party liable to assessment for property as being in his possession, control, or management, within the meaning of section 3629 of the Political Code, his "possession" must be one that carries with it the usual marks and indications of ownership.

Weyse vs. Crawford, 85 Cal. 196.

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Property on storage in a warehouse, for which the owners of the warehouse had given storage receipts, each receipt showing that the holder of the receipt was the owner of the property described in it, and there on store, is not in the "possession, control, or management" of the owners of the warehouse, within the meaning of section 3629 of the Political Code, and a tax levied and imposed upon such an assessment is not a lien upon any of the property of the owners of the warehouse, nor are they liable therefor; and an injunction will be issued to restrain the tax collector from selling the warehouse for a delinquent tax upon the goods stored therein.

Weyse vs. Crawford, 85 Cal. 196.

A tax can never be extended by construction to things not named in the statute as the subject of taxation.

Merced County vs. Helm, 102 Cal. 159.

The presumption is always in favor of an assessment, and the burden of showing the contrary is on the person claiming to be aggrieved. Moreover, independent of special statutory provisions relative to presumptions in favor of assessments, the general presumption that public officers have regularly performed their duties, and that official duty has been regularly performed, applies to official action in tax matters.

Western Union Telegraph Company vs. County of Los Angeles, 160 Cal. 124.

A seat in the San Francisco stock exchange board is not taxable property. An attempt to tax such seat, in addition to the taxes upon all the property of the stock board and corporation, is void as an attempt at double taxation.

City and County of San Francisco vs. Anderson, 103 Cal. 69; citing *People ex rel. Burke vs. Badlam*, 57 Cal. 594; *Lowenberg vs. Greenebaum*, 99 Cal. 162; distinguishing *Clute vs. Loveland*, 68 Cal. 254. But see *Rogers vs. Hennepin Co.*, 240 U. S. 184.

A selection of public land made by the state, under the act of congress of March 3, 1853, in lieu of the thirty-sixth section, until it has been approved by the secretary of the interior, does not give to the state any legal or equitable right to the land; and without such approval neither the state nor its grantee can question any future disposition which the United States may make of the land embraced in the attempted selection.

Roberts vs. Gebhart, 104 Cal. 67; citing *Buhne vs. Chism*, 48 Cal. 471.

A mortgage of land, executed to the regents of the University of California, to secure money due said body for any purpose for which it was created, and the interest which it thereby, for the purposes of taxation, holds in the land, is the property of the state, within the meaning of section 1 of article XIII of the constitution, exempting state property from taxation, and as such the said interest is exempt from taxation.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *Hollister vs. Sherman*, 63 Cal. 38; *People vs. Board of Supervisors*, 77 Cal. 137; *Henne vs. Los Angeles County*, 129 Cal. 298.

There is no personal liability of the owner of land to pay the taxes levied and made a lien thereupon; and the payment of such taxes can be enforced only by a sale of the land in the mode prescribed by statute.

McPike vs. Heaton, 131 Cal. 109; distinguishing *San Gabriel, etc., Water Co. vs. Witmer*, 96 Cal. 623. See, also, *Henry vs. Garden City Bank*, 145 Cal. 54.

The covenant against encumbrances implied from a deed of grant embraces taxes levied for the fiscal year succeeding the date of the grant, which were a lien upon

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the land as of the first Monday in March preceding the date of the grant. The covenant implied against the encumbrance of such taxes is a personal covenant, which does not run with the land, or pass to an assignee, or succeeding grantee. A succeeding grantee who has paid the taxes can not maintain an action against the first grantor for such taxes.

McPike vs. Heaton, 131 Cal. 109; citing *Lawrence vs. Montgomery*, 37 Cal. 183. See, also, *Henry vs. Garden City Bank*, 145 Cal. 54.

A reclamation district is a public agency of the state; and property acquired thereby, which is indispensable to the execution of its objects, is public property of the state, within the meaning of the constitution, and is exempt from state and county taxes as such.

Reclamation District No. 551 vs. County of Sacramento, 134 Cal. 477; citing *People vs. Reclamation District No. 551*, 117 Cal. 114; *Hensley vs. Reclamation District No. 556*, 121 Cal. 96; *County of Kings vs. County of Tulare*, 119 Cal. 509.

The strictness of construction which at one time prevailed in matters of taxation has been greatly relaxed in modern days. The obligation of all citizens to contribute to the expenses of government is recognized, and instead of regarding proceedings for the levy and collection of taxes as hostile to the property owner, he is considered to be interested equally with all other citizens in the prompt collection of the taxes. A tax properly imposed upon his property will be upheld if the description of the property is sufficient to give him notice that it is burdened with the tax.

Best vs. Wohlford, 144 Cal. 733; citing *Rollins vs. Wright*, 93 Cal. 395; *Davis vs. Pacific Imp. Co.*, 37 Cal. 245. See, also, *Best vs. Wohlford*, 153 Cal. 17.

Proceedings to sell property for taxes are to be strictly followed, and if there is any material irregularity in the assessment or in the subsequent proceedings, the sale, and the certificate and deed based thereon, are absolutely void.

Holland vs. Hotchkiss, 162 Cal. 366.

An assessment of a portion of a public street is void, and creates no lien upon the land assessed; nor can a sale and conveyance by the tax collector to the state for a delinquent tax thereupon transfer title to the state, nor would a grantee from the state acquire any right in the land, or by reason of such sale be authorized to close the street from use by the public. Taxes paid thereon, under protest, are to be regarded as voluntary payment and can not be recovered back.

Warren vs. City and County of San Francisco, 150 Cal. 167; citing *Symons vs. San Francisco*, 115 Cal. 555.

The assessments consisted of (a), "mining rights and privileges under lease made by Harris *et al.*—owners of the fee—to plaintiff for oil mining in and to 7000 acres of land"; and (b), for the same year the land was assessed to the owners of the fee. Plaintiff seeks to recover taxes paid on "a," on the grounds of the illegality of the assessment. *Held*, as a general rule, in the absence of statutory provisions, where land is held under an ordinary lease for years giving the right to hold the land for usufructuary purposes only, there can be but one assessment of the entire estate in the land, which should include the value of both the estate for years and of the remainder or reversion. Notwithstanding the repeal in 1880 of section 3887 of the Political Code, which provided that the lessor of real estate was liable for the taxes thereon, this is the rule that still obtains in this state as to land held under such leases.

Graciosa Oil Company vs. County of Santa Barbara, 155 Cal. 140.

Under section 1 of article XIII of the constitution, and sections 3617, 3820-3822 of the Political Code, enumerating the various kinds of real estate that are subject

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to taxation, and providing methods for the enforcement thereof, the estate of a lessee in lands overlying oil-bearing strata, who has the right under his lease to bore for, extract, and convert to his own use oil therefrom, upon paying a royalty to the lessor, without any right to the ordinary usufruct of the soil, may be separately assessed for purposes of taxation to the lessee, and the remainder of the entire estate in the land may be separately assessed to the lessor.

Graciosa Oil Company vs. County of Santa Barbara, 155 Cal. 140; citing *State vs. Moore*, 12 Cal. 70.

The constitution and laws upon the subject of taxing property are to be understood as referring to private property and persons, and not including public property of the state, or any subordinate part of the state government.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *People vs. Doe*, 36 Cal. 222; *People vs. McCreery*, 34 Cal. 456; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360; *Smith vs. City of Santa Monica*, 162 Cal. 221.

The general rule applied in all such cases is that statutes authorizing liens on or forced sales of property, generally, will not be held applicable to public property, unless the intention to make them so expressly or plainly appears.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *Mayrhofer vs. Board of Education*, 89 Cal. 110; *Ruperich vs. Bachr*, 142 Cal. 193.

Wells, pumping machinery and pipe lines on water-bearing lands, together with such lands, constitute "real estate" within the definition of that term as used in the revenue act, which includes "the possession of claimants, ownership of or right to the possession of land," and all such property should be assessed and taxed as real estate.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

When the complaint in an action to recover taxes paid under protest does not negative, the presumption that official duty of the assessor and of the state and county boards of equalization were regularly performed, its averments do not justify the conclusion of the plaintiff that the improvements were assessed as personal property.

California Domestic Water Company vs. County of Los Angeles, 10 Cal. App. 185.

A municipality has the right to assess all real property found within its limits for the purpose of maintaining the municipal revenues, and the county taxing officials have the right to levy upon the same property for county purposes.

Temescal Water Company vs. Niemann, 22 Cal. App. 174.

A municipal corporation may assess a part of a water system, that is, canals, pipe-lines, and rights of way, located within the city limits, although the system is appurtenant to the land without the municipality.

Temescal Water Company vs. Niemann, 22 Cal. App. 174; citing *San Francisco, etc., Railway vs. Scott*, 142 Cal. 222; *Kern Valley Water Company vs. County of Kern*, 137 Cal. 511; *Farmer vs. Ukiah Water Company*, 56 Cal. 11; distinguishing *Coonradt vs. Hill*, 79 Cal. 587.

The law does not require an *easement* to be assessed.

Silva vs. Hawn, 10 Cal. App. 544; citing *Oneta vs. Restano*, 78 Cal. 374, 379.

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It is the legal duty of every person liable for taxes to pay the same when due, and the power of the state to impose upon the taxpayer penalties for non-compliance with this duty, and such costs as are reasonably incurred in the enforcement of the same, including reasonable attorneys' fees, can not be doubted.

Engebretsen vs. Gay, 158 Cal. 30.

The theory of the provision of section 3628 of the Political Code is that the owner must be charged with knowledge of the property which he owns, that it is his duty to list the same for assessment and to see that he pays the taxes thereon, and that when endeavoring to ascertain the amount of his tax he must search until he finds his property—if not in his own name, then in such name as the assessor has listed it.

Webster vs. Somer, 159 Cal. 459.

The grant by the United States of lands in lieu of the sixteenth and thirty-sixth sections lost to the state was not *in praesenti* and could not vest title until such lieu lands were listed from the United States to the state; and a state certificate of purchase of lieu lands vests no title, legal or equitable, prior to the approval of the selection by the United States, and if the selection is rejected there is no possibility of title under such certificate.

Slade vs. County of Butte, 14 Cal. App. 453; citing *Roberts vs. Gebhart*, 104 Cal. 67; *Roberts vs. Gebhart*, 138 Cal. 202; *Allen vs. Pedro*, 136 Cal. 1.

An assessment for purposes of taxation levied upon public property of a mandatory or agency of the state, such as a municipal corporation, is void.

Smith vs. City of Santa Monica, 162 Cal. 221; citing *People vs. McGreery*, 34 Cal. 432; *People vs. Doc*, 36 Cal. 220; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360.

Certificates of purchase of lieu lands, apart from the land, which convey no title thereto, legal or equitable, are not taxable as property.

Slade vs. County of Butte, 14 Cal. App. 453; citing *People vs. Donnelly*, 58 Cal. 144; *People vs. Frisbie*, 31 Cal. 146.

A city which acquired real property after the first Monday in March became liable for state and county taxes subsequently levied and assessed thereupon for that year. The lien for the taxes levied and assessed for that year attached upon such real property on the first Monday in March of that year, regardless of its then ownership, and the subsequent acquisition of title thereto by the city could not affect such lien.

City of Santa Monica vs. Los Angeles County, 15 Cal. 710. But see *Smith vs. City of Santa Monica*, 162 Cal. 221.

In the matter of taxation, the obligation imposed upon the property is such as to render it liable for the tax thereafter levied and assessed, which is an immediate liability created, even though there may be an omission or irregularity in subsequent proceedings affecting the levy and assessment. These may in subsequent years be corrected, and the liability enforced. The city acquiring the title after the first Monday in March before the levy and assessment occupies no different position than it would have occupied if it had acquired the property after the levy and assessment had been made and equalized, in which event the property so acquired was subject to the lien on account of the taxes levied and unpaid.

City of Santa Monica vs. Los Angeles County, 15 Cal. App. 710. But see *Smith vs. City of Santa Monica*, 162 Cal. 221.

Under the law of this state as established at the beginning and as embodied in the Civil Code of 1872, the water right which a person gains by diversion from a stream for a beneficial use is a private right, which is subject to ownership and

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disposition by him as in the case of other private property. The same is true as to the water rights in streams upon the public domain of California which the act of Congress of July 1, 1866, confirmed or provides for the acquisition of in the future.

Thayer vs. California Development Company, 164 Cal. 117.

Taxes for the support of schools are in their nature special taxes, and the legislature has the power to limit their assessment to the property within the respective districts to be served.

Wood vs. County of Calaveras, 164 Cal. 398; citing *Chico High School Board vs. Board of Supervisors*, 118 Cal. 119; *Brown vs. Visalia*, 141 Cal. 380; *People vs. Lodi School District*, 124 Cal. 700; *Hughes vs. Ewing*, 93 Cal. 417.

Under section 2275 of the United States revised statutes, as amended by the act of congress of February 28, 1891, neither the State of California nor its transferee acquired any vested right in land selected by it as indemnity for losses sustained to its grant of public land for common schools, until the selection was formally approved for listing by the secretary of the interior; and if, prior to such approval, the land selected by the state as agricultural land be found to be mineral land, the secretary of the interior, under the act of congress of July 25, 1910, has no authority to approve the selection.

Buena Vista Land and Development Company vs. Honolulu Oil Company, 166 Cal. 71.

Riparian rights, being rights and privileges appertaining to the riparian land, section 3617 of the Political Code contemplates their inclusion in the assessment of the land, and it must be assumed, nothing appearing to the contrary, that the assessor has pursued this course; if he does not thus intend to include the value of the riparian rights, in assessing the land, it should so appear in his assessment.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278.

The assessment of riparian lands to one person, without any intention appearing to exclude therefrom the appurtenant riparian rights, and the assessment of such rights to another, constitutes double taxation within the prohibition of the constitution and the Political Code.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278; citing *Germania Trust Company vs. San Francisco*, 128 Cal. 589; *Estate of Fair*, 128 Cal. 607.

A description in an assessment of riparian rights: "In Washington township, said county: Riparian Rights. The right to take, divert, and use water from Alameda creek and its tributaries," is insufficient to impart validity to the tax under section 3650 of the Political Code.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278.

Where a county is divided so that part of an existing school district falls in the new county, the board of supervisors of the new county is without authority to order the annexation of that portion of the district to one of its own districts, and if such order is made, the district to which the annexation is thereby attempted is without authority to levy taxes upon the property so annexed.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580; citing *Wood vs. County of Calaveras*, 164 Cal. 398.

Where a county is divided so that part of an existing school district falls in the new county, the board of supervisors of the new county is without authority to order the annexation of that portion of the district to one of its own districts, and if such order is made, the district to which the annexation is thereby attempted is

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without authority to levy taxes upon the property so annexed. Moreover, if such a tax is levied, an owner of land affected thereby is entitled to an injunction against a sale of his property for nonpayment of the tax.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580; distinguishing *Savings and Loan Society vs. Austin*, 46 Cal. 415; *Houghton vs. Austin*, 47 Cal. 647; *Crocker vs. Scott*, 149 Cal. 575.

Where an assessment is of property not subject to the particular tax or where the persons exacting it are without authority in the premises, and where they are seeking to exercise authority over lands within their corporate jurisdiction, equity will raise its restraining hand.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580.

A leasehold interest in submerged lands which belong to the state can not be taxed to the lessee.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425.

Where land is leased, the owner of the fee may fairly be deemed to be the owner of the whole estate for purposes of taxation.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425.

Land held under an ordinary lease for years, giving the right to hold the property for usufructuary purposes only, is subject to but one assessment of the entire estate in the land against the owner of the fee. The assessment should not include the value of both of the estates for years and the remainder or reversion.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425; distinguishing:

People vs. Shearer, 30 Cal. 645;

People vs. Frisbie, 31 Cal. 146;

People vs. Black Diamond Coal Co., 37 Cal. 54;

Los Angeles vs. Los Angeles Water Works, 49 Cal. 638;

San Francisco vs. McGinn, 67 Cal. 110;

Bakersfield Oil Company vs. Kern County, 144 Cal. 148;

Graciosa Oil Company vs. Santa Barbara, 155 Cal. 140.

A leasehold is property under certain circumstances and for certain purposes, but it is not property for the purposes of taxation under our revenue and fiscal laws, notwithstanding the fee is owned by the state and hence is not taxable.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. City of Los Angeles, 167 Cal. 425; distinguishing *Graciosa Oil Company vs. Santa Barbara County*, 155 Cal. 140.

Proceedings for the enforcement of assessments under street improvement acts are proceedings *in invitum*, which must be strictly followed, else a sale in pursuance thereof will pass no title to the purchaser.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

Lands subject to a railroad right of way fronting on a street are subject to assessment for the improvement of the street and should be assessed as lands fronting on the street, but excluding from such assessment the easement held for right of way purposes.

Schaffer vs. Smith, 169 Cal. 764; distinguishing *Southern California Railway Co. vs. Workman*, 146 Cal. 80, and *Fox vs. Workman*, 155 Cal. 201.

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XXXVI. Taxation. Liability. XXXVII. Taxation. Equality and Uniformity.

Property in the town of Hillsborough is not subject to a tax levied prior to its incorporation for the purpose of paying upon the principal and interest of certain bonds of the San Mateo School District issued prior to the incorporation of said town for the purchase of school lots and the building of school houses in said district, but outside the limits of said town, and where said taxes were paid under protest by the owner of such property, they may be recovered.

Scott vs. County of San Mateo, 27 Cal. App. 708.

Under section 1 of article XIII of the constitution, *prior to the 1914 amendment thereof*, all property belonging to a municipal corporation is exempt from taxation, regardless of its location or the use to which it is to be put, as the language employed in such section in classifying the property declared to be exempt from taxation limits the exemption to property *used* for free public libraries, and free museums, and such property as may *belong* to the United States, this state or to any county or municipal corporation within this state—the word “belong” being employed to denote an unqualified ownership of the property, and not an ownership subject to the condition that the property was to be used exclusively for governmental purposes.

City and County of San Francisco vs. McGovern, et al., 28 Cal. App. 491.

The issuance to an applicant for a patent to government land of the receiver's final receipt constitutes a conveyance to him by the government of the equitable title, and thereafter the government, until the patent is issued, holds the legal title as a mere trustee for the applicant without any further proprietary interest in the land.

Colm vs. Francis, 30 Cal. App. 742.

XXXVII. Taxation. Equality and Uniformity.

The provisions of the constitution that “taxation shall be equal and uniform throughout the state,” applies only to direct taxation, and not to licenses, and therefore, in the imposition of taxes on certain classes of persons, occupations, etc., the legislature may discriminate, taxing some and exempting others.

People vs. Coleman, 4 Cal. 46;

Hart vs. Plum, 14 Cal. 148.

The only limitation on the taxing power of the legislature is the provision for equality and uniformity.

People vs. Burr, 13 Cal. 342.

The constitutional provision that “taxation shall be equal and uniform” is not violated by exempting church and school lands.

High vs. Shoemaker, 22 Cal. 363.

The only restriction imposed upon legislative discretion in the matter of taxation by our constitution is, that it shall be equal and uniform, and in proportion to the property taxed.

Beals vs. Board of Supervisors, Amador County, 35 Cal. 624.

A tax is equal and uniform which reaches and bears with like burden upon all the property within the given district, county, etc. It bears the like burden when the valuation of each parcel is ascertained in the same mode—the mode prescribed by law—and when it is subject to the same rate of taxation as other property within the district, county, etc. Absolute equality is unattainable.

People vs. Whyler, 41 Cal. 351.

The legislature can not authorize a board of supervisors to remit a tax, or a portion of a tax, within a specified district, and to do so is violative of the constitutional principle of equality and uniformity.

Wilson vs. Supervisors, Sutter County, 47 Cal. 91.

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Those clauses in the constitution which provide that taxation shall be equal and uniform, and prescribe the mode of assessment, and the officer by whom it shall be made, and that all property shall be taxed, have no application to assessments levied for local improvements.

Hagar vs. Supervisors, Yolo County, 47 Cal. 222; citing *Emery vs. S. F. Gas Co.*, 28 Cal. 345; *Burnett vs. Mayor of Sacramento*, 12 Cal. 76.

An assessment for improving a street in a city is a tax, and therefore must be levied with equality and uniformity.

Whiting vs. Quackenbush, 54 Cal. 306.

To render taxation uniform, it is essential that each taxing district confine itself to the objects of taxation within its limits; but this with the understanding that the *situs* of personal property may be the domicile of the owner.

People vs. Townsend, 56 Cal. 633.

The constitution does not authorize or require, but forbids the double taxation of property.

People ex rel. Burke vs. Badlam, 57 Cal. 594. See, also, *Crocker vs. Scott*, 149 Cal. 575.

The constitutional provision requiring uniformity of taxation does not prohibit the imposition of a license upon a particular business, notwithstanding the property used in that business is subject to and has paid an *ad valorem* property tax.

Ex parte Mirande, 73 Cal. 365.

An excessive valuation is not by itself alone evidence of fraud, and any inference or presumption of fraud arising from merely excessive valuation is repelled by proof that the valuation was arrived at by a proper method.

City of Los Angeles vs. Western Union Oil Company, 161 Cal. 204; distinguishing *Postal Telegraph-Cable Company vs. Dalton*, 119 Cal. 604.

In the absence of fraud on the part of the assessor, his method of arriving at the valuation of property is a matter committed entirely to his determination.

Kern River Company vs. County of Los Angeles, 164 Cal. 751; citing *San Jose Gas Company vs. January*, 57 Cal. 614; *Los Angeles vs. Western Union Oil Company*, 161 Cal. 206; distinguishing *Los Angeles Gas and Electric Company vs. County of Los Angeles*, 162 Cal. 165.

Double taxation does not necessarily consist in assessing the same property twice to the same person, but may consist in a double contribution to the same tax on account of the same property, though the assessments are to different persons.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545.

Savings Bank of St. Helena vs. County of Napa, 17 Cal. App. 674; citing *Germania Trust Company vs. San Francisco*, 128 Cal. 589; *Estate of Fair*, 128 Cal. 607; *Estate of Pichoir*, 128 Cal. 615.

Whatever may be the law of other states, double taxation, or more, at the same time, for the same purpose, and upon the same property, is void in this state, by whatever standard levied, as being neither equal nor uniform.

Napa Savings Bank vs. County of Napa, 17 Cal. App. 545.

Savings Bank of St. Helena vs. County of Napa, 17 Cal. App. 674.

The operation of a law is none the less uniform because it operates differently upon different classes, provided there be a reasonable basis for the classification and for a different treatment of the various classes.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

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XXXVII. Taxation. Equality and Uniformity. XXXVIII. Taxes. Levy of.

The conclusion of assessing officers as to the value of property for purposes of taxation, when honestly arrived at and when not made in pursuance of some fixed rule or general system the result of which is necessarily discriminatory and inequitable, is conclusive on the courts, however erroneous the conclusions of those officers may be.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *San Jose Gas Company vs. January*, 57 Cal. 614; *Henne vs. County of Los Angeles*, 129 Cal. 297.

A taxpayer may collaterally assail an assessment in the courts where it was fraudulently and corruptly made with the intention of discriminating against him, and for the purpose of causing him to pay more than his share of the public tax, and it has that effect, or where there is something equivalent to fraud in the making of the assessment, producing such effect. This is as true where the injurious effect so produced is caused by inequality of valuation as by any other cause.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164; citing *County of Los Angeles vs. Ballerino*, 99 Cal. 593; *Postal Telegraph-Cable Company vs. Dalton*, 119 Cal. 604.

Although the evidence may warrant the conclusion of something equivalent to fraud by the assessor in the matter of the assessed valuation of property, still to enable the owner to recover the tax paid on the alleged excess valuation it must appear that the county board of equalization in some manner participated in the fraud when the matter came before it on application for reduction.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 162 Cal. 164.

XXXVIII. Taxes. Levy of.

The levy of a tax creates a judgment and lien on the property assessed, and has the same force and effect of an execution.

County of Yuba vs. Adams Co., 7 Cal. 35;
Kelsey vs. Abbott, 13 Cal. 609.

The assessment of taxes is not a judicial act, but is a legislative act, and can not be delegated to any branch of the judicial department.

Placer County vs. Astin, 8 Cal. 303;
Hardenburgh vs. Kidd, 10 Cal. 402.

A tax, in order to be valid, must rest upon an assessment made in the mode prescribed by law, by an assessor duly elected for that purpose.

People vs. Hastings, 29 Cal. 449; citing *Ferris vs. Coover*, 10 Cal. 632.
See, also, *People vs. S. F. Savings Union*, 31 Cal. 132.

A statute requiring the tax levy to be made on a certain day or at a certain time is mandatory.

People vs. McCrecry, 34 Cal. 432.

When a legislative act makes it the duty of the board of supervisors to levy a tax, mandamus will lie to compel performance.

Robinson vs. Board of Supervisors, Butte County, 43 Cal. 353.

The legislature can not confer upon a state board of equalization of taxes, the power to add to or deduct from the assessed value of property, as fixed by the assessors elected by the people, for such power would in effect constitute such board a board of assessors; therefore, a statutory law which grants to said board the right

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to fix the rate of taxation "after allowing for a delinquency in the collection of taxes" is unconstitutional and void, as a delegation of legislative power to said board.

Houghton vs. Austin, 47 Cal. 646;

Harper vs. Rowe, 53 Cal. 233.

The legislature can not delegate power to the state board of equalization to fix the rate of taxation, "after allowing for delinquency in the collection of taxes," affirming *Houghton vs. Austin*, 47 Cal. 646.

San Francisco and North Pacific Railroad Company vs. State Board of Equalization, 60 Cal. 12.

A tax is not void because the record of the board of supervisors in levying it is not signed by the chairman and clerk of the board.

People vs. Eureka Lake and Yuba Canal Company, 48 Cal. 143.

If the tax contains an illegal item, such item will not invalidate the levy, as to other items, if the levy is so made that the illegal item may be separated from the other items of the levy.

DeFremery vs. Austin, 53 Cal. 380; citing *Wills vs. Austin*, 53 Cal. 152.

Tax proceedings are *in invitum*, and to be valid must be *stricti juris*; and a complaint to recover taxes must show upon its face a *prima facie* case of a valid tax assessed and levied, and that it is delinquent. The statute waiving informality in the assessment does not excuse the total want of assessment, which can not exist without a description showing the general character and *situs* of the property. The statute nowhere waives informality in the levy of the tax. There is no tax until one is levied, and a complaint for taxes shows no indebtedness without averring the levy.

People vs. Central Pacific Railroad Company, 83 Cal. 393; citing *Moss vs. Shear*, 25 Cal. 46; *People vs. Mahoney*, 55 Cal. 288; *Lake County vs. Sulphur Bank Q. M. Co.*, 66 Cal. 20.

The words "assessing and collecting" may be so used as to include the operation called the levy of the tax.

City of San Luis Obispo vs. Pettit, 87 Cal. 499.

The levy of a tax is a ministerial and not a judicial act, and a writ of prohibition will not lie to restrain the levy.

City of Coronado vs. City of San Diego, 97 Cal. 440; citing *Maurer vs. Mitchell*, 53 Cal. 289; *LeConte vs. Town of Berkeley*, 57 Cal. 269; *People vs. Election Commissioners*, 54 Cal. 404.

Under section 12 of article XI of the constitution, the legislature can not impose a tax upon the property or inhabitants of a school district, nor can it prescribe a procedure through which such tax would inevitably be levied, without leaving any discretion in regard to it to the local authorities.

McCabe vs. Carpenter, 102 Cal. 469; citing *Hughes vs. Ewing*, 93 Cal. 414.

The power to levy a tax is purely legislative.

McCabe vs. Carpenter, 102 Cal. 469.

Under the present statutory law, the board of supervisors of the city and county of San Francisco have the power to fix the rate of taxation, and the mayor has no veto of their action in the matter.

Truman vs. Board of Supervisors, San Francisco, 110 Cal. 128.

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It is the express statutory duty of the auditor to recognize, compute, and enter the tax levy in accordance with the rate fixed by the board of supervisors, and *mandamus* will lie to compel the performance of such duty.

Morton vs. Broderick, 118 Cal. 474.

A tax assessment is not invalid by reason of the failure of the county auditor to comply with section 3731 of the Political Code, which requires him, after receiving from the state board of equalization a statement of whatever changes have been ordered by said board in the assessment book of the county and after making the corresponding changes, if any, in said assessment book, to then compute and enter in a separate money column in the assessment book the respective sums to be paid as a tax on the property, and segregate and place in their proper columns of the book the respective amounts due in installments, as such work is no part of the levy, but is merely a step in the process of the collection of taxes.

Peoples Water Company vs. Boromeo, 31 Cal. App. 270; citing *Allen vs. McKay Company*, 120 Cal. 332.

To be valid the assessment and levy of taxes must be made strictly as provided by law.

Dranga vs. Rowe, 127 Cal. 506; citing *Weyse vs. Crawford*, 85 Cal. 196; *Perry vs. Washburn*, 20 Cal. 318.

The authority given to levy taxes for the maintenance of high schools flows from the same source as the authority to levy taxes for the construction of buildings in which the schools are to be held, and the latter power is coextensive with the former. No vote of the people of the high school district is necessary to authorize the supervisors to levy a tax for a high school building in a union high school district, upon a proper estimate made as provided by law.

Bancroft vs. Randall, 4 Cal. App. 306.

All proceedings in the nature of assessing property for the purpose of taxation and in laying and collecting taxes thereof, are *in invitum*, and must be *stricti juris*.

Guptill vs. Kelsey, 6 Cal. App. 35; citing *Weyse vs. Crawford*, 85 Cal. 196; *Hearst vs. Egglestone*, 55 Cal. 365; *Gwynn vs. Dierssen*, 101 Cal. 566; *Shipman vs. Forbes*, 97 Cal. 574; *Mendocino County vs. Helm*, 102 Cal. 159; *Dranga vs. Rowe*, 127 Cal. 509.

The rule of strict construction in tax matters, in so far as it is applicable to the determination of the validity of a tax levy, only means that the validity of the levy must be determined from a consideration of the language of the board of supervisors used in making it without resort to extraneous evidence to prove its intention.

Deets vs. Hall, 163 Cal. 249. See, also *Knight vs. Hall* and *Hall vs. Tucker*, 28 Cal. App. 435.

Where the validity of a tax levy is attacked for the alleged reasons that the tax rate fixed by the order of the board of supervisors was uncertain, and that a portion of the taxes levied was not levied for any specific purpose and was not apportioned to any specific fund, the intention of the board in such respect is to be ascertained from a consideration and construction of the entire order for the levy, and errors which clearly appear to be merely clerical are to be disregarded.

Deets vs. Hall, 163 Cal. 249.

In the absence of any special provision in the permanent road division act, determining upon what basis the tax is to be levied, or the method of its collection or

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enforcement, the tax will be based *ad valorem*, and the mode of levy and collection will be that provided in sections 3607 to 3900 inclusive of the Political Code.

Potter vs. County of Santa Barbara, 160 Cal. 349; citing *Holly vs. County of Orange*, 106 Cal. 420.

An assessment for purposes of taxation levied upon public property of a mandatory or agency of the state, such as a municipal corporation, is void.

Smith vs. City of Santa Monica, 162 Cal. 221; citing *People vs. McCreery*, 34 Cal. 432; *People vs. Doe*, 36 Cal. 220; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360.

The provision in the charter of San Francisco that the suspension of the "dollar limit" of taxation in case of great necessity or emergency can be done only "by the unanimous vote of the supervisors," does not require, for such suspension, the unanimous vote of all the supervisors constituting the board, but only the unanimous vote of all who are actually present at the meeting.

San Christina Investment Company vs. City and County of San Francisco, 167 Cal. 762.

The question of the necessity for the suspension of the "dollar limit" of taxation, as fixed by the charter of the city and county of San Francisco, is one of fact, and the determination by the supervisors of the existence of such necessity is not final.

Josselyn vs. City and County of San Francisco, 168 Cal. 436; citing *San Christina Investment Company vs. San Francisco*, 167 Cal. 762. See, also, *Otis vs. City and County of San Francisco*, 170 Cal. 98.

Where an ordinance of the city and county of San Francisco, purporting to determine the existence of "a great public necessity and emergency" for two specified purposes, is void because no such necessity or emergency exists, the special levy founded thereon of additional taxes for such purposes, in excess of the "dollar limit," falls with it, and the taxes levied therefor are void. The special levy for one of such purposes can not be upheld on the ground that the amount thereof, added to the amount of the general levy, after the exclusion therefrom of an illegal item, would not exceed in the aggregate the dollar limit.

Josselyn vs. City and County of San Francisco, 168 Cal. 436. See, also, *Otis vs. City and County of San Francisco*, 170 Cal. 98.

Under the provisions of the San Francisco charter, as well as by general law, the municipality is authorized to levy a tax only for bonds which have become an obligation of the city. A tax levied for the payment of the interest on and the redemption of bonds which had not been sold or contracted to be sold at the time of the levy, is unlawful, and the recovery of the amount paid thereon under protest may be had under the provisions of section 3804 or section 3819 of the Political code.

Connelly vs. City and County of San Francisco, 164 Cal. 101.

A county in levying a tax to raise revenue for the support of its county government is not a party aggrieved by the exemption of a particular piece of property from taxation, and can not raise the question that the construction of the constitution exempting property of a municipal corporation from taxation within its boundaries, is in conflict with section 1 of amendment XIV of the federal constitution.

City and County of San Francisco vs. McGovern et al., 28 Cal. App. 491.

It is an essential condition upon which the legal duty of a city council to include the amount of a judgment against the municipality in the tax levy is dependent, under the act of 1901 (Stats. 1901, p. 794), providing for the payment of judgments against counties, cities, cities and counties, and towns, that the county clerk must

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furnish said city council with a report of said judgment at least fifteen days before the day on which the law requires the tax levy to be made; and where such report is not received until the day of the levy, provision must be made in the next year's levy for the payment of the judgment, and the fact that no earlier notice of the judgment could have been given does not affect such statutory provision.

Arthur vs. Horwege, 28 Cal. App. 738. See, also, *Burr vs. Board of Supervisors of San Francisco*, 30 Cal. App. 755.

XXXIX. Taxes. Lien of.

The lien of a tax extends back to the assessment, and the assessment creates a lien which is not extinguished until the tax is paid. The assessment of taxes and the lien which it creates are matters of public record, of which all purchasers are bound to take notice, and the purchaser of land is bound at his peril to see that the taxes have been paid.

Reeve vs. Kennedy, 43 Cal. 643.

NOTE.—See section 3716 of the Political Code.

A judgment, regular on its face, enforcing a lien for a tax will not be set aside in equity for irregularities in levying and assessing the tax of which the purchaser had no notice.

Stokes vs. Geddes, 46 Cal. 17.

A lien upon real property for a personal property tax against the owner can not be extinguished without paying the taxes or selling the property for the payment thereof, and is not barred by the statute of limitations.

Lewis vs. Rothchild, 92 Cal. 625.

NOTE.—See section 3717 of the Political Code.

Where a tax has the force of a judgment, an action commenced thereon more than five years after the right accrued, is barred by limitation, though the judgment is not thereby satisfied.

City of San Diego vs. Higgins, 115 Cal. 170.

The legislature has power to make the lien of taxes paramount to all other liens upon land, so that where a sale is made the purchaser takes title free from encumbrance.

California Loan and Trust Company vs. Weis, 118 Cal. 489.

Under section 3717 of the Political Code, every tax due upon personal property is a lien upon the real property of the owner thereof from and after twelve o'clock m., of the first Monday in March in each year; and in pursuance of the provisions of article XIII, section 4, of the constitution, and of sections 3716 and 3718 of that code, such lien, and the title which a purchaser gets under a sale of the land for delinquent personal property taxes, is paramount to the lien of a mortgage which attached to the land prior to the lien of such tax.

California Loan and Trust Company vs. Weis, 118 Cal. 489.

Taxes upon the mortgaged premises paid by the mortgagee for the purpose of preserving his security, may be added to the mortgage. An assessment by a reclamation district, like any other tax, creates a lien upon the land paramount to the lien of the mortgage, and, when paid by the mortgagee, may be added to the mortgage.

Weinreich vs. Hensley, 121 Cal. 647.

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A lien for public taxes and assessments is upon the property, and is paramount to all liens acquired by personal contact; and the lien of an assessment for a street improvement is superior to the lien of a prior mortgage upon the property assessed.

O'Dea vs. Mitchell, 144 Cal. 374; citing *German Savings and Loan Society vs. Ramish*, 138 Cal. 120.

The rule that a tax lien is paramount and prior to a mortgage lien must give way when the mortgage lien is exempt from taxation because the mortgage is the property of the state.

Webster vs. Board of Regents of the University of California, 163 Cal. 705; citing *California Loan and Trust Company vs. Weis*, 118 Cal. 489.

The lien of a valid assessment for street improvements covers the entire estate, and is paramount to all private liens upon the property, including the lien of a prior mortgage thereon.

Chase vs. Trout, 146 Cal. 350;
Lantz vs. Fishburn, 3 Cal. App. 662.

The general rule is that taxes are not a lien, unless expressly made so by statute, and the time to which the lien will attach, if at all, must be determined by the statute.

City of Escondido vs. Escondido Lumber, etc., Company, 8 Cal. App. 435.

The lien of a tax is not extinguished by lapse of time so long as the principal obligation is kept alive.

Worth vs. Worth, 155 Cal. 599; citing *Weinberger vs. Weidman*, 134 Cal. 600; *Foster vs. Bowles*, 138 Cal. 346.

The subsequent fixation of the amount of the lien, through levy and assessment, was but a step necessary for the enforcement of the established lien. When these acts were performed, they, by relation, became a part of the established lien, and were secured thereby.

City of Santa Monica vs. Los Angeles County, 15 Cal. App. 710.

A city by its organization is not vested with any power to aid the state or county in the levy or collection of taxes for state or county purposes; and the bare acquisition of property by a city which is subject to a lien for state or county purposes, did not carry with it any interest or estate in the lien thereby created which could be merged in the title of the city.

City of Santa Monica vs. Los Angeles County, 15 Cal. App. 710. See, also, *Smith vs. City of Santa Monica*, 162 Cal. 221.

The statement as to a poll tax contained on the delinquent roll is not an "assessment" of property at all, but is simply a statement as to a tax and a penalty thereon, which, with other taxes and penalties, are to be enforced against the property assessed. It is a matter required to be shown on the delinquent roll, with delinquent state, road, and hospital tax, by section 3764 of the Political Code, in order that all taxes constituting liens on the property assessed may be collected or enforced against such property.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

Real property acquired by the state under a sale to it for delinquent taxes can not be subsequently sold by it under an order of the state controller, if the legal title thereto, excepting such title as the state acquired by the tax collector's deed, has in the interim become vested in a municipal corporation under condemnation proceedings for a public purpose.

Smith vs. City of Santa Monica, 162 Cal. 221.

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When a municipal corporation acquires property under condemnation proceedings, the title which the state takes by a tax collector's deed is merged into the larger title which the municipality holds under the trusts both for the public as distinguished from the state, and also for the state as the supreme sovereign.

Smith vs. City of Santa Monica, 162 Cal. 221; distinguishing *City of Santa Monica vs. County of Los Angeles*, 15 Cal. App. 710.

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Under the act of April, 1911 (Stats. 1911, p. 530), all power of the state board of equalization in the matter of the making of assessments for state purposes and the equalization thereof ends with the final delivery by it of the record of assessments to the state controller, and thereafter a writ of mandate will not lie to compel it to assess the property of a railroad for taxes for the current fiscal year. Such an assessment would be wholly void.

San Diego and Arizona Railway Co. vs. State Board of Equalization, 164 Cal. 41.

On an application for a writ of mandate, in the absence of a showing to the contrary in the petition, it must be presumed that official duty has been regularly performed, and that the state board of equalization finally delivered its record of assessments to the state controller on the day required by the statute.

San Diego and Arizona Railway Co. vs. State Board of Equalization, 164 Cal. 41.

Under the provisions of the act of 1911 (Stats. 1911, p. 538), any protest by a city assessor against the taxation by the state board of equalization of certain property of a railroad company as operative property must be filed within thirty days after the receipt of the company's report, which that act requires to be served on him. Such requirement is jurisdictional, and a protest filed later has no effect, and does not require the state board to revise or alter its action in placing such property on the assessment roll as operative property, or to dispose of the protest in any way. Its failure to make any order disposing of a belated protest is not a breach of duty, and *mandamus* will not lie to compel the entry of such order.

Pacific Electric Railway Company vs. Rolkin et al., 164 Cal. 154.

The decision of the state board of equalization upon the question whether property of a railroad is operative or nonoperative for the purposes of taxation, within the meaning of the first and second paragraphs of section 14 of article XIII of the constitution, and of the act of April 1, 1911 (Stats. 1911, p. 530), is not conclusive upon the courts in a proceeding by *mandamus* to compel the assessment of such property as operative, where there was no conflicting evidence, nor any dispute about the facts upon which its decision depended. In such a case, the decision of the board depends wholly upon a question of law, and if the facts show that the property is operative, *mandamus* will lie against the board to compel its assessment as such.

San Diego and Arizona Railway Company vs. State Board of Equalization, 165 Cal. 560.

Where a railroad company has built fourteen miles of its line and has run thereon regularly, on a fixed schedule time, each way, every day except Sundays, a mixed train carrying all freight and passengers offered by the public, at fixed rates, and still continues such operation, the part of the line so operated is "operative property," within the meaning of section 2 of the act of April 1, 1911, and of section 14 of article XIII of the constitution, and is taxable only for state purposes.

San Diego and Arizona Railway Company vs. State Board of Equalization, 165 Cal. 560.

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The provision of section 8 of the act of April 1, 1911, that the state board of equalization "shall finally determine the fact of such operation and the liability of any such company to be taxed upon its gross receipts," must be construed in connection with section 10 which declares that such determination shall be binding upon all parties "unless set aside by a court of competent jurisdiction." From this it follows that the determination of the board on the subject is not final, but may be reviewed and set aside in a proper action in any court having jurisdiction, if good cause exists therefor.

San Diego and Arizona Railway Company vs. State Board of Equalization,
165 Cal. 560.

Mandamus will lie to compel the state board of equalization to assess the operative property of a railroad whenever the time to elapse is such that such remedy can be made available to protect the road against an unlawful imposition of taxes by county officials because of a wrongful decision of the board. Section 23 of the act of 1911, authorizing the taxpayer to sue for and recover taxes paid, if they have been unlawfully assessed and collected, is not an exclusive remedy.

San Diego and Arizona Railway Company vs. State Board of Equalization,
165 Cal. 560.

Section 468 of the Civil Code, first enacted in 1872, defining when a railroad is to be deemed in "full operation" and providing for its forfeiture for failure to so keep it, has no application to the determination of the question whether or not the property of a railroad or other public service corporation is "operative," within the meaning of section 14 of article XIII of the constitution, and the act of 1911.

San Diego and Arizona Railway Company vs. State Board of Equalization,
165 Cal. 560.

Statutes providing for a forfeiture are not ordinarily to be extended by implication to qualify statutes upon other subjects. So long as the state does not avail itself of the forfeiture, but permits a railroad company to continue to carry on its business for compensation, the property owned, used and possessed by it must be taxed in the manner provided in the taxation laws relating to such property and to such companies. The act of 1911, defines for itself what shall be deemed "operative property" for taxation. This provision excludes the definition of "full operation" in section 468 of the Civil Code, and it must be given controlling effect whenever the right to taxation, the liability for taxation, or the mode of taxation, is involved.

San Diego and Arizona Railway Company vs. State Board of Equalization,
165 Cal. 560.

Under the provisions of section 14 of article XIII of the constitution, as ratified November 8, 1910, public utility corporations which pay the state a tax upon their gross receipts from operation, banks which pay a tax upon their capital stock, and insurance companies paying the state a tax upon their gross premiums, are relieved from the payment of the so-called state corporation license tax, of the so-called motor vehicle tax, and of all local licenses, under the provisions of said section of the constitution which provides that such payments "shall be in lieu of all other taxes and licenses, state, county and municipal."

City and County of San Francisco vs. The Pacific Telephone and Telegraph Company, 166 Cal. 244;

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270;

Pacific Gas & Electric Company vs. Roberts, 168 Cal. 420;

Southern Trust Company vs. City of Los Angeles, 168 Cal. 762;

Hughes vs. City of Los Angeles, 168 Cal. 764.

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The right of insurance companies, whether foreign or domestic, to do an insurance business in this state is a franchise, and is property of the company engaged in it. It is upon this franchise that under such provisions of the constitution (section 14 of article XIII) the tax therein provided for is levied. The state license tax imposed under the act of March 20, 1905, as it stood when the constitutional provision was adopted, was a tax for revenue imposed, so far as insurance companies are concerned, on their franchise right to do business in the state.

Hartford Fire Insurance Co. vs. Jordan, 168 Cal. 270; citing *City of Los Angeles vs. Los Angeles Independent Gas Co.*, 152 Cal. 765; *City of Sonora vs. Curtin*, 137 Cal. 583.

Where an action is brought against a state officer in both his official and individual capacities, and a judgment is rendered against him solely as an individual, he has no right to appeal therefrom in his official capacity. On such an attempted appeal, the court will not consider the question whether or not the action was in legal effect one against the state, which the superior court had no jurisdiction to entertain.

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270.

The license charge imposed by the motor vehicle act is an excise or privilege tax, established for the purposes of revenue in order to provide a fund for roads under the dominion of the state authorities. It is not a tax imposed as a rental charge or a toll charge for the use of the highways owned or controlled by the state.

Pacific Gas and Electric Company vs. Roberts, 168 Cal. 420; citing *Western Union Telegraph Company vs. Hopkins*, 160 Cal. 106.

The method of taxation of public service corporations adopted by section 14 of article XIII of the constitution is intended as a substitute not only for the *ad valorem* taxes theretofore levied upon their franchises and physical properties, but also for all privilege taxes, whether the same are imposed upon the right to conduct business, or upon specific personal property as a condition of the right to use it generally or for some specific purpose.

Pacific Gas and Electric Company vs. Roberts, 168 Cal. 420; citing *City and County of San Francisco vs. Pacific Telephone and Telegraph Company*, 166 Cal. 244; *Hartford Fire Insurance Company vs. Jordan*, 168 Cal. 270.

Section 14 of article XIII of the constitution, declaring that, based upon gross revenue, railroad companies shall pay to the state a tax upon certain enumerated properties "and other property, or any part thereof, used exclusively in the operation of their business in this state," does not authorize the imposition of such tax upon steamboats belonging to and operated by a railroad company on a lake at which its railroad line terminates, for the purpose of carrying goods and passengers between many different points thereon both within and without the state, if such steamboats are not used exclusively in the operation of its railroad business.

Lake Tahoe Railway and Transportation Company vs. Roberts, 168 Cal. 551.

A steamboat in operation is a single, indivisible fabric, and if not used exclusively in the railroad business, it can not be said that "any part thereof" is so used, within the meaning of that phrase as used in the constitution.

Lake Tahoe Railway and Transportation Company vs. Roberts, 168 Cal. 551.

Under section 14 of article XIII of the constitution, only property used exclusively, or only a several part of property used exclusively in the operation of the business of the railroad, should be included in the list of property whose sole and only tax is covered by the gross revenue percentage, and the earnings of other properties not so exclusively used in whole or in part are not an element in the admeasurement of this tax.

Lake Tahoe Railway and Transportation Company vs. Roberts, 168 Cal. 551.

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Section 14 of article XIII of the state constitution, providing for the taxation of the capital stock of all banks doing business within the state, and declaring that the tax so prescribed "shall be in lieu of all other taxes and licenses, state, county and municipal, upon such shares of stock and upon the property of such banks, except county and municipal taxes on real estate and except as otherwise in this section provided," renders invalid an excise or occupation tax attempted to be imposed by a municipal ordinance upon the right of such banking institutions to conduct their business.

Southern Trust Company vs. City of Los Angeles, 168 Cal. 762.

As a corporation can act only through agents, a revenue tax, imposed by a municipal ordinance, upon agents of insurance companies for the right to do business, is a tax upon the corporation's right to do business; and such an ordinance imposing a license-tax upon every person, firm, or corporation conducting, managing, or carrying on the business of a general or local insurance agent within the municipality, is in violation of section 14 of article XIII of the state constitution requiring every insurance company within the state to pay an annual tax of one and one-half per cent upon the amount of gross premiums received by it upon its business done in the state, and declaring that such tax shall be in lieu of all other taxes or licenses, except county and municipal taxes on real estate, and except as otherwise provided in this section.

Hughes vs. City of Los Angeles, 168 Cal. 764.

The word "recover" when used in connection with actions at law for money, does not necessarily, or even ordinarily, include the actual payment of the money sued for. Ordinarily the word does not include more than the recovery of judgment for the money. As used in subdivision "g" of section 14 of article XIII of the constitution, actual payment of the money is not included in its meaning. The declaration in said subdivision, that the taxpayer "may maintain an action to recover" the taxes illegally collected, is not a declaration that such taxes shall be repaid to him. The action is complete when the judgment becomes final. There is nothing in said subdivision that can be understood as a declaration concerning the manner of satisfaction of the judgment when recovered.

Westinghouse Electric & Manufacturing Co. vs. Chambers, 169 Cal. 131.

Under section 14 of article XIII of the constitution of California, the property of a "car" company which owns, prepares, and operates freight-cars and supplies refrigeration and cars to a railroad company for certain considerations, such property consisting of land and a manufacturing, precooling, and repairing plant situated thereon, used for manufacturing ice and icing and precooling perishable products, and shipping them in cars over the railroad, and repairing such cars, all of which was done under its contract with the railroad company, is "operative" property, and is not the subject of local taxation.

County of San Bernardino vs. State Board of Equalization et al., 172 Cal. 76.

The act approved April 1, 1911 (Stats. 1911, p. 530), is not one providing for an exemption of property from taxation, deserving a strict construction, but rather provides for a change in the method of taxation.

County of San Bernardino vs. State Board of Equalization et al., 172 Cal. 76.

The functions of manufacturing ice, precooling and repairing cars, etc., are so intimately connected with the furnishing of refrigerated carriage of perishable articles as to be, in contemplation of law, a part of the transportation itself.

County of San Bernardino vs. State Board of Equalization et al. 172 Cal. 76.

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The tax levied by Levee District No. 1 of Sutter County to pay the principal and interest on an outstanding bonded indebtedness of the district is a tax and not an assessment for benefits.

Southern Pacific Company vs. Levee District No. 1 of Sutter County, 172 Cal. 345; citing *People vs. Whyler*, 41 Cal. 351; *Williams vs. Corcoran*, 46 Cal. 553; *Wilson vs. Board of Supervisors of Sutter County*, 47 Cal. 91; *Smith vs. Farrelly*, 52 Cal. 77; *City Street Imp. Co. vs. Regents, etc.*, 153 Cal. 776.

The provisions of section 14 of article XIII of the constitution establishing a method of taxing the operative property of certain public service corporations for state purposes, and providing that such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon such property, except as otherwise provided in such section, have the effect to exempt the operative property of such corporations, situated in a levee district, from all taxation by such district, except to pay the principal and interest of bonded indebtedness created and outstanding by the district before the adoption of that section of the constitution.

Southern Pacific Company vs. Levee District No. 1 of Sutter County, 172 Cal. 345.

The funds obtained from the stockholders of a bank in liquidation, which he was liquidating, constituted no part of the bank's assets, and are not to be counted in ascertaining the value of the shares of the bank in state taxation under subdivision (c) of section 14 of article XIII of the constitution.

The People vs. Bank of Shasta County, 172 Cal. 507.

A telephone line which extends from two public resorts to a connecting main line, and which is owned and used by the proprietors of the resorts for their own accommodation and is open to the use of all persons sojourning at such resorts *upon payment of a toll*, is a public utility, within the meaning of section 23 of article XII of the constitution.

Camp Rincon Resort Company vs. Eshleman et al., 172 Cal. 561.

A municipality is not a "district" within the meaning of that word as used in subdivision (f) of section 14 of article XIII of the constitution, providing that "the legislature shall provide for the reimbursement from the general funds of any county to districts therein where loss is occasioned in such districts by the withdrawal from local taxation of property taxed for state purposes only."

City of San Bernardino vs. Horton et al., 173 Cal. 396.

The value for purposes of assessment and taxation of the shares of the capital stock of a bank, whether state or national, in accordance with the provisions of subdivision (c) of section 14 of article XIII of the constitution, is to be computed by including, in addition to the amount paid in on the stock, every item of property embraced within accumulated surplus and undivided profits, with the single exception of real estate taxed for county purposes. This necessitates the inclusion of the value of the shares of stock of other banking corporations whether state or national, owned by the bank, notwithstanding such other shares are subject to a separate assessment and taxation.

Bank of California National Association vs. Roberts, 173 Cal. 398.

The bank in paying the tax does so only on behalf of its stockholders, and in separately assessing the stock in the other banks owned by it, the tax is imposed not upon those banks, but upon the holders of the shares, whoever they may be.

Bank of California National Association vs. Roberts, 173 Cal. 398.

In the absence of express constitutional provisions, there is no necessary or inherent objection to taxing the same property twice to different persons so long, as least, as

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there is some kind of estate or right, in both persons taxed, to the taxed property. Such taxation does not contravene any provision of the federal constitution. Moreover, the state constitution, since the amendments of 1910 to sections 1 and 14 of article XIII thereof, does not prohibit such double taxation.

Bank of California National Association vs. Roberts, 173 Cal. 398.

Section 5219 of the Revised Statutes of the United States authorizes the taxation of shares owned by a national bank in another bank, whether state or national.

Bank of California National Association vs. Roberts, 173 Cal. 398.

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Under section 2664 of the Political Code (now repealed), the road tax and property tax provided for in the preceding sections can not be levied or collected from the inhabitants or property of incorporated towns and cities, which by municipal authority levy such taxes for the streets and alleys thereof.

Martin vs. Ashton, 60 Cal. 63.

Where, in the original assessment roll, a special bridge tax in a road district was not carried to nor entered in the column headed "total tax," but the assessment roll showed clearly what the omitted total tax was, the omission may be supplied by the assessor, upon consent in writing of the district attorney, at any time prior to a sale for delinquent taxes.

County of San Luis Obispo vs. White, 91 Cal. 432.

A county may sue in its own name to recover taxes levied upon a road district.

County of San Luis Obispo vs. White, 91 Cal. 432.

The authority given to the board of supervisors to expend the funds of the county in constructing county roads is limited to localities outside of incorporated cities, and no tax can be levied for county road purposes upon any property in such city.

Devine vs. Board of Supervisors, Sacramento County, 121 Cal. 670; *distinguishing People vs. Counts*, 89 Cal. 15.

The act of 1883 (Stats. 1883, pp. 5-20), relating to highways, and providing for a road tax outside of municipalities, was not repealed by the county government act of 1895. Said act is not unconstitutional on the ground that it in effect exempts municipalities from taxation for county road purposes. Municipalities are exempted from an outside road tax merely because they are made separate districts, and are required to maintain their own streets and alleys.

Miller vs. County of Kern, 137 Cal. 516; affirming *Martin vs. Ashton*, 60 Cal. 63.

The school law contemplates and requires that all school funds raised from state and county taxes shall be applied exclusively to the support of common schools, consisting of primary and grammar schools in each school district.

Stockton School District vs. Wright, 134 Cal. 64.

Under section 4088 of the Political Code, authorizing any county to incur a bonded indebtedness for any purpose, for which the board of supervisors are herein authorized to expend the funds of said county, "or for the purpose of building or constructing roads, bridges, or highways," a county may issue its bonds, payable by means of a tax levied on all the property of the county, including that within municipalities, for the purpose of building or constructing roads, bridges, or highways; and it is immaterial that there has been no modification or repeal of section 2 of the highway act of February 28, 1883, which simply prohibited the inclusion of a municipality within a road district of the county, or the collection therein of

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road poll tax, or the property tax for county highway purposes levied annually by the board of supervisors.

Johnson vs. Williams, 153 Cal. 368; distinguishing *Derine vs. Board of Supervisors*, 121 Cal. 670; *Wright vs. Sacramento County*, 54 Pac. 1030 (not reported).

The fact that the general fund of the county is derived in part from taxation of property in municipalities, which are required by law to construct their own streets and alleys, and which can not be included in any general road district, can not authorize the superior court by writ of review, upon the petition of taxpayers of the municipalities, to annul the proceedings by the supervisors for the construction of public roads under statutory authority.

Robinson vs. Linscott, 12 Cal. App. 429; citing *Johnson vs. Williams*, 153 Cal. 368.

The formation of permanent road divisions and similar districts is a function pertaining purely to the legislative branch of the government. The legislature can create them, or cause them to be created, without giving any person a voice or hearing upon the matter. Wherefore, it may do so by giving such persons as it may think best an opportunity to be heard.

Potter vs. County of Santa Barbara, 160 Cal. 349; citing *Dean vs. Davis*, 51 Cal. 406; *Hughes vs. Ewing*, 93 Cal. 417; *Laguna vs. Martin*, 144 Cal. 209; *People vs. Sacramento Drainage District*, 155 Cal. 373.

It is argued that a permanent road division under the statute is not a corporate entity, has no corporate existence, and can not, therefore, issue bonds. But the answer to this is that it does not issue bonds. The agency for the bond issue is the board of supervisors, and the tax for the payment of the bonds is imposed upon the property of the division.

Potter vs. County of Santa Barbara, 160 Cal. 349; citing *People vs. Reclamation District*, 117 Cal. 121; *In re Madera Irrigation District*, 92 Cal. 308.

The law recognized and declared, even before the adoption of section 1580 of the Political Code, that a school district whose territory, by the division of a county, lay partly in one and partly in another county, *ipso facto* became a joint district.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580.

Where a county is divided so that part of an existing school district falls in the new county, the board of supervisors of the new county is without authority to order the annexation of that portion of the district to one of its own districts, and if such order is made, the district to which the annexation is thereby attempted is without authority to levy taxes upon the property so annexed.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580; citing *Wood vs. County of Calaveras*, 164 Cal. 398.

The provisions of the Political Code as they existed prior to the amendments of 1909 (Pol. Code, secs. 1670, 1675), exempts the property in a union high school district from taxation for the support of a county high school. Such exemption is not in violation either of subdivision 20 of section 25 of article IV of the constitution, which prohibits local laws exempting property from taxation, or of section 11 of article I, which requires all laws of a general nature to have a uniform operation.

Wood vs. County of Calaveras, 164 Cal. 398.

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The whole matter of the formation of high school districts is one of legislative control, and the legislature, in such sections, clearly provide for the formation of a union high school within a county where a county high school exists.

Wood vs. County of Calaveras, 164 Cal. 398.

Taxes for the support of schools are in their nature special taxes, and the legislature has the power to limit their assessment to the property within the respective districts to be served.

Wood vs. County of Calaveras, 164 Cal. 398; citing *Chico High School Board vs. Board of Supervisors*, 118 Cal. 119; *Brown vs. Visalia*, 141 Cal. 380; *People vs. Lodi School District*, 124 Cal. 700; *Hughes vs. Ewing*, 93 Cal. 417.

The people within a union high school district are not estopped to deny the validity of a tax on the property therein situated assessed for the support of a county high school, merely because a similar tax had been formerly paid without protest.

Wood vs. County of Calaveras, 164 Cal. 398; citing *Raisch vs. City and County of San Francisco*, 80 Cal. 6; *Lukens vs. Nye*, 156 Cal. 506.

XLII. Taxes. Collections of Assessor.

Under section 3820 of the Political Code, the tax assessor has power to enforce the collection of taxes assessed on personal property against such property whenever in his opinion the lien upon the real property is insufficient to secure payment upon the real and personal property; and the judgment or opinion which the assessor formed, and upon which he acted in exercising the power, can not be reviewed by the courts, after he has collected and paid over the taxes to the county treasurer.

County of San Mateo vs. Maloney, 71 Cal. 205; citing *Porter vs. Haight*, 45 Cal. 639.

The statute requiring the assessor to collect the taxes assessed upon personal property at the time of the assessment, upon the basis of the levy of the previous year where the taxes are not secured by lien upon real estate, is constitutional and valid, and neither conflicts with article XIII of the constitution, requiring property to be taxed in proportion to its value, to be ascertained as provided by law, nor with subdivision 10 of section 25 of article IV, which prohibits the legislature from passing local or special laws for the assessment or collection of taxes.

Rode vs. Siebe, 119 Cal. 518;

Pacific Postal Tel-Cable Co. vs. Dalton, 119 Cal. 604.

The distinction between secured and unsecured taxes is intrinsic, and justifies a classification based thereupon; and a law providing for the collection of unsecured taxes upon personal property at a different time and in a different manner from the collection of taxes upon personal property which are secured by lien upon real estate, is general and uniform in its operation, and is not a special law for the collection of taxes within the meaning of the constitution.

Rode vs. Siebe, 119 Cal. 518;

Pacific Postal Tel-Cable Co. vs. Dalton, 119 Cal. 604.

It is the official duty of a county assessor to collect all poll taxes, and all taxes upon personal property assessed to persons who are not assessed upon land and improvements; and, for the neglect of such official duty, the sureties on his official bond are liable.

People vs. Smith, 123 Cal. 70; citing *People vs. Gardner*, 55 Cal. 304.

The assessor is clothed with discretion to determine whether to collect personal property taxes only when the taxes are a lien upon real estate or improvements upon land, and the sufficiency of the security is involved, in which case he is not liable upon his bond for an error of judgment. He has no discretion as to the

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collection of taxes upon personal property in cases where no real estate or improvements upon land are assessed; but his duty to collect them is ministerial, and the neglect to discharge it is a breach of his bond.

People vs. Smith, 123 Cal. 7.

In an action upon the official bond of an assessor for failure to collect taxes which it was his official duty to collect, evidence of his motives is immaterial, and he can not prove that he instructed his deputies "not to press the collection of the taxes, as he did not want the parties mad at him."

People vs. Smith, 123 Cal. 7.

Money collected by the assessor for taxes upon personal property, unsecured by lien upon real estate, if found to be in excess of the amount finally determined to be due, must be repaid by the county treasurer, to the person from whom the collection was made, or to his assignee, on demand therefor. Such demand need not be audited, but the treasurer may be compelled by *mandamus* to repay such excess, and the treasurer can not offset an indebtedness of the plaintiff for unpaid taxes of a previous year.

Corbett vs. Widber, 123 Cal. 154; citing *Ex parte Reis*, 64 Cal. 233; *Ex parte Widber*, 91 Cal. 367.

The "excess" collections made by the assessor on personal property taxes collected under the provisions of sections 3820-3825 of the Political Code, constitute no part of the public funds, but are held in trust for the rightful owners.

Corbett vs. Widber, 123 Cal. 154; citing *Pacific Mutual, etc., Company vs. San Diego County*, 112 Cal. 314; *Elberg vs. San Luis Obispo County*, 112 Cal. 316.

The fund of excessive taxes on personal property accumulated in a county treasury under the sections of the Political Code relating to the collection and payment of such unsecured taxes constitutes an express continuing trust, against which the statute of limitations does not begin to run until such trust, with the knowledge or on the demand of the taxpayer, has been repudiated.

MacMullan vs. Kelly, 19 Cal. App. 700; citing *Corbett vs. Widber*, 123 Cal. 154; *Miller & Lux vs. Batz*, 142 Cal. 447.

The legislative intent to create a trust, as defined in section 852 of the Civil Code, and to express the subject matter, purpose and beneficiary of the trust, as therein required, is clearly indicated by the terms of section 3824 of the Political Code, empowering assessors to collect personal property taxes on the basis of the last year's levy, and the other provisions of the Political Code relating to the collection of personal property taxes, which clearly create an express trust as to any excess, which continues until the individual amounts which go to make up the accumulated trust fund of excess taxes are called for by the taxpayers or their assigns.

MacMullan vs. Kelly, 19 Cal. App. 700.

The provisions of the Political Code prohibiting county treasurer's from distributing moneys from the county treasury except upon warrants issued by the auditor only applies to moneys owned by the county. But the county has no title to excessive taxes held in the treasury, which belong only to the taxpayers from whom they were received, or their assigns, and no auditor's warrant is requisite to a refunding of the same.

MacMullan vs. Kelly, 19 Cal. App. 700; citing *Corbett vs. Widber*, 123 Cal. 154; *Trower vs. City and County of San Francisco*, 157 Cal. 762.

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The possessory right to a mining claim is properly assessed as real estate under section 3617 of the Political Code; and under section 3820 of that code, such assessment is immediately due and payable to the assessor, and it is the duty of the possessor to pay the same upon demand of the assessor. The fact that such taxes were paid under protest, and under a threat of the assessor to sell the possessory right in the land (which he had no right to do), can not alter the immediate duty of the possessor to pay the tax, and can not sustain an action by him to recover back the taxes which were properly paid to the assessor.

Bakersfield and Fresno Oil Company vs. Jameson, 144 Cal. 148; citing *Merced Mining Company vs. Fremont*, 7 Cal. 317; *People vs. Moore*, 12 Cal. 56; *People vs. Shearer*, 30 Cal. 645.

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"United States notes," issued under the act of congress of February 25, 1862, are not receivable for state and county taxes.

Perry vs. Washburn, 20 Cal. 318.

Taxes are not debts, within the meaning of the act of congress of February 25, 1862, which provides that the notes issued thereunder shall be "a legal tender in payment of all debts, payable and private." Congress by these terms, only intended such obligations for the payment of money as are founded upon contract. A tax is a charge upon persons or property to raise money for public purposes. It is not founded upon contract, and does not establish the relation of debtor and creditor between the taxpayer and the state.

Perry vs. Washburn, 20 Cal. 318; distinguishing *Moore vs. Patch*, 12 Cal. 270; *People vs. Seymour*, 16 Cal. 340.

Parol evidence of the payment of taxes by the administrator on the property of the estate is admissible, after the loss of the tax receipts has been shown.

Estate of Moore, 72 Cal. 335.

The manner of collecting taxes rests with the legislature, and when the legislature has prescribed the particular mode, that procedure must be followed, unless it is apparent that it was not intended that such course of procedure should be exclusive.

People vs. Ballerino, 99 Cal. 598; citing *People vs. Pico*, 20 Cal. 595; *People vs. Holladay*, 25 Cal. 301; distinguishing *Oakland vs. Whipple*, 39 Cal. 112.

So long as the moral obligation to pay any portion of the tax exists, a court of equity will not lend its aid to prevent a cloud upon the title, but will leave the party to his remedy at law.

Couts vs. Cornell, 147 Cal. 560; citing *Easterbrook vs. O'Brien*, 98 Cal. 674; *Weber vs. San Francisco*, 1 Cal. 457; *Hibernia, etc. vs. Ordway*, 38 Cal. 682; *San Jose Gas Co. vs. January*, 57 Cal. 614; *City of Los Angeles vs. Ballerino*, 99 Cal. 597; *Quint vs. Hoffman*, 103 Cal. 508; *Pacific P. I. Co. vs. Dalton*, 119 Cal. 606; *Ellis vs. Witmer*, 134 Cal. 253; *Hellman vs. Shoulters*, 114 Cal. 141. See, also, *Grant vs. Cornell*, 147 Cal. 565.

In an action involving the embezzlement of moneys collected for taxes by a deputy assessor; held, that when one assumes to act as agent for another, he may not, when challenged for those acts, deny his agency; that he is estopped, not merely as against his assumed principal, but also against the state; that one who is agent enough to receive money is agent enough to be punished for embezzlement.

People vs. Robertson, 6 Cal. App. 514; citing *People vs. Treadwell*, 69 Cal. 226; *People vs. Royce*, 106 Cal. 187; *People vs. Cobler*, 108 Cal. 541; *People vs. Oldham*, 111 Cal. 648.

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XLIII. Taxes. Payment. XLIV. Taxes. Payment; protest.

After state lands, upon which a certificate of purchase was issued without other payment than twenty per cent of the price, were sold and deeded to the state for delinquent taxes, upon resale thereof, the first applicant is required by law to repay the state for the taxes and penalties, but where his application is cancelled after such repayment, no second repayment thereof is required of a subsequent applicant, but his purchase may be made under the general provisions of law for the sale of state lands.

Coffin vs. Kingsbury, 12 Cal. 567.

The provision of section 3788 of the Political Code, requiring repayment of delinquent taxes and penalties in case of resale of unpaid lands deeded to the state for delinquent taxes, is intended as a provision for the collection and disposition of unpaid revenue, and when that revenue is once collected as a condition of purchase, that section is not to be construed as requiring a second collection thereof, as a condition of a second application for purchase.

Coffin vs. Kingsbury, 12 Cal. App. 567.

The statement as to a poll tax contained on the delinquent roll is not an "assessment" of property at all, but is simply a statement as to a tax and a penalty thereon, which, with other taxes and penalties, are to be enforced against the property assessed. It is a matter required to be shown on the delinquent roll, with delinquent state, road, and hospital tax, by section 3764 of the Political Code, in order that all taxes constituting liens on the property assessed may be collected or enforced against such property.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

In proportion to their interests all tenants in common are in duty bound to pay taxes. Either of them may pay the taxes assessed against the whole estate, and such payment discharges the lien imposed upon the common interest; and no matter whether the tenant paying them intended the payment to be for his own benefit or not, such payment in fact and in law essentially inures to the benefit of the other cotenants. It discharges the lien against the common estate for the common benefit, independently of any intention of the cotenant paying it; and as all other cotenants are entitled to the benefits of such payment, they should refund to the one making it, their proportion of the amount he has paid.

Willmon vs. Koyer, 168 Cal. 369.

XLIV. Taxes. Payment—Protest.

Money voluntarily paid upon a claim of right, with full knowledge of all the facts, can not be recovered back merely because the party at the time of payment was ignorant of or mistook the law as to his liability. The illegality of the demand paid constitutes of itself no ground for relief. There must be in addition some compulsion or coercion attending its assertion, which controls the conduct of the party making the payment. Generally, to constitute such compulsion or coercion as to render the payment involuntary, there must be some actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment, over the person or property of the party making the payment, from which the latter has no other means of immediate relief than by advancing the money.

Brumagin vs. Tillinghast, 18 Cal. 265.

Where taxes have been illegally assessed, and the tax collector is about to sell the property for the taxes thus assessed, the tax can be paid under protest and the money recovered back by action.

Guy vs. Washburn, 23 Cal. 111; affirming *Hayes vs. Hogan*, 5 Cal. 243;

Falkner vs. Hunt, 16 Cal. 167.

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If the money was paid under protest, and was not justly due, it may be recovered back.

Bucknall vs. Story, 46 Cal. 589; citing *Falkner vs. Hunt*, 16 Cal. 167; *Hayes vs. Hogan*, 5 Cal. 241; *McMillan vs. Richards*, 9 Cal. 417; *Guy vs. Washburn*, 23 Cal. 113; *Brumagin vs. Tillinghast*, 18 Cal. 271.

A threat by the tax collector to sell the lands for taxes made before the taxes become delinquent does not amount to coercion.

Williams vs. Corcoran, 46 Cal. 553; citing *Bucknall vs. Story*, 46 Cal. 589.

If money illegally exacted is paid under coercion to a party for his own use, no protest is necessary in order to lay the foundation for an action to recover it back.

Meek vs. McClure, 49 Cal. 623.

If a public officer who illegally demands money of a person and exacts the payment thereof by coercion has notice of the facts which render the demand illegal, the party who pays him the money need not make the payment under protest in order to be able to recover it back, but if the officer has no notice of such illegality, protest is necessary.

Meek vs. McClure, 49 Cal. 623; citing *Hayes vs. Hogan*, 5 Cal. 243; *McMillan vs. Richards*, 9 Cal. 417; *Falkner vs. Hunt*, 16 Cal. 170.

When a protest is necessary to enable a party who pays money to an officer, illegally exacted, to recover it back, the protest must state the grounds upon which the party paying the money claims that the demand is illegal.

Meek vs. McClure, 49 Cal. 623.

If a board of equalization increases the assessed value of a taxpayer's property without having acquired jurisdiction to do so, and the money is paid to the tax collector under protest and under coercion, and there is nothing in the assessment roll or documents which comes to the hands of the tax collector to notify him that the action of the board of equalization was illegal, the protest must notify him of that fact.

Meek vs. McClure, 49 Cal. 623.

Proof that a tax was paid under a written protest before it became delinquent, and before threats were made to sell the property for its collection, is not proof that it was paid under duress.

Bank of Woodland vs. Webber, 52 Cal. 73.

It is not necessary for a person paying a tax under protest to state facts in the protest of which the tax collector has notice.

Smith vs. Farrelly, 52 Cal. 77; affirming *Meek vs. McClure*, 49 Cal. 628; *Mason vs. Johnson*, 51 Cal. 612.

A tax paid under protest, after the delinquent list comes into the hands of the tax collector for collection by sale of property, and after publication of the delinquent list, is paid under duress.

Smith vs. Farrelly, 52 Cal. 77; citing *Williams vs. Corcoran*, 46 Cal. 555.

To enable one to recover back a tax illegally assessed, and paid under protest, it must appear that the tax was delinquent, and that the officer to whom it was paid was armed with authority, real or pretended, to seize property, and threatened to do so.

Bank of Santa Rosa vs. Chalfant, 52 Cal. 170; citing *Bank of Woodland vs. Webber*, 52 Cal. 73; *Bucknall vs. Story*, 46 Cal. 598.

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If the owner of a lot in a city pays an assessment levied on the same for improving it, which is illegal and void, it will be regarded as a voluntary payment, and he can not recover it back in an action at law against the officer, even if it was paid under protest after a threatened sale.

DeBaker vs. Carillo, 52 Cal. 473; citing *Bucknall vs. Story*, 46 Cal. 595.

The payment of taxes where there is no legal duress must be deemed to have been voluntary, and the money can not be recovered back.

Wills vs. Austin, 53 Cal. 152.

If a tax sale is absolutely void, the payment of the tax by the purchaser stands on the footing of a voluntary payment, not made at the request of the owner, and which a court of equity will not require him to refund.

Harper vs. Rowe, 53 Cal. 233.

The payment to a tax collector of the amount of a tax, made before the tax was returned as delinquent, was voluntary, although accompanied by a protest in form, and the amount so paid can not be recovered back.

Merrill vs. Austin, 53 Cal. 379; citing *Williams vs. Corcoran*, 46 Cal. 556; *Bank of Woodland vs. Webber*, 52 Cal. 73.

A threat by the tax collector to seize and sell property, by virtue of a delinquent list, to satisfy an illegal tax, amounts in law to coercion.

DeFremery vs. Austin, 53 Cal. 380; distinguishing *Williams vs. Corcoran*, 46 Cal. 553.

In case of the payment of the whole tax a protest is not sufficient, unless it specifies such illegal item among the grounds of illegality of the tax.

DeFremery vs. Austin, 53 Cal. 380; citing *Meek vs. McClure*, 49 Cal. 628.

Taxes were paid by the complainant on \$12,481 deposited by him in the Santa Cruz Bank of Savings and Loan, the complainant being assessed for that sum of money in connection with other property. Complainant claimed the assessment to him of such money was illegal because the same money was assessed for the same year to said bank. The county board of equalization denied relief. On the last day for the payment of taxes without delinquency complainant paid the taxes. *Held*, that the payment was voluntary and the tax could not be recovered back by action, and that the complainant had no claim for it which he could enforce against the county.

Younger vs. Board of Supervisors, Santa Cruz County, 68 Cal. 241.

In an action to recover taxes alleged to have been paid under duress, to prevent a sale of real estate, if the complaint alleges facts showing that the assessment was void for want of a description sufficient to identify the land, and was raised by the board of equalization without notice, it follows from the allegations that all the proceedings of the tax collector in the premises were void, and that his threat to sell constituted no duress.

Cooper vs. Chamberlain, 78 Cal. 450; citing *Wills vs. Austin*, 53 Cal. 152; *Bucknall vs. Story*, 46 Cal. 589; *DeBaker vs. Carillo*, 52 Cal. 473; *Brumagin vs. Tillinghast*, 18 Cal. 265.

In an action to recover back personal property taxes, a complaint which merely alleges that at the time the taxes were paid the delinquent list was being published, and which does not aver that any real property was assessed to or owned by the plaintiff, upon which the assessment of the personal property was a lien, or that there was any seizure of, or any threat or attempt to seize, the plaintiff's property, fails to show that the taxes were paid under duress or coercion. In the absence

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of acts amounting to duress or coercion, the payment of a tax is voluntary, although made under protest.

Dear vs. Varnum, 80 Cal. 86; citing *McMillan vs. Richards*, 9 Cal. 417; *Bucknall vs. Story*, 46 Cal. 597; *Bank of Woodland vs. Webber*, 52 Cal. 73; *Wills vs. Austin*, 53 Cal. 152; *Brumagin vs. Tillinghast*, 18 Cal. 266.

In order to constitute a payment under duress, there must be some coercion or compulsion, or some threatened exercise of authority over the person or property of the party making the payment, which controls his action, and which can be avoided only by making the payment; nor does the payment of a tax under protest of such party take from the payment its voluntary character, unless it is necessary to protect his person or property, or unless the conveyance by the officer will have the effect to deprive the owner of some defense to the tax, or throw upon him the burden of showing its illegality; and where the officer's want of authority will appear upon the face of the deed, or the illegality of the proceedings will necessarily appear in any attempt to disturb the owner in the possession of the land, a payment under protest to prevent such sale is not made under duress, but is voluntary, and can not be recovered back.

Phelan vs. City and County of San Francisco, 120 Cal. 1; citing *Bucknall vs. Story*, 46 Cal. 589; *Wills vs. Austin*, 53 Cal. 172; *Maxwell vs. San Luis Obispo*, 71 Cal. 466.

If a tax is valid and constitutes a lien upon the land of the person paying the tax, his protest at the time of paying the tax can give him no right to recover back the sum paid by reason of any defect in the proceedings for the sale of the land to enforce collection, but in such case the satisfaction of the obligation to pay the tax, and the release of the lien thereof upon his property, are a sufficient motive and consideration for the payment to take from it all character of duress.

Phelan vs. City and County of San Francisco, 120 Cal. 1.

No tender is necessary to be made of any part of a void (street) assessment as a condition of equitable relief against its enforcement.

Chase vs. City Treasurer of Los Angeles, 122 Cal. 540.

It is the duty of the tax collector to pay all taxes collected by him into the county treasury; and an action will not lie against him to recover taxes paid to him under protest, though the assessment was void.

Craig vs. Boone, 146 Cal. 718; citing *Bailey vs. Johnson*, 121 Cal. 563; *Guy vs. Washburn*, 23 Cal. 113; *McCabe vs. Carpanter*, 102 Cal. 469; *San Francisco vs. Ford*, 52 Cal. 199; *Phelan vs. San Francisco*, 120 Cal. 5.

When an illegal demand is made against the person or property of an individual which can be enforced only by a judgment therefor in an action at law wherein he can contest its legality, or if made under a threatened sale of his property, and he can contest the validity of the proceedings whenever an attempt is made to disturb his possession, and he pays the claim or demand rather than be subjected to such action or to have his property sold, such payment is voluntary, to the extent that it can not be recovered in an action therefor. If, however, an illegal demand is made by any person holding an official position, with the color of authority to enforce the same, and such demand operates as a restraint upon the exercise of an undoubted right or privilege, and in its enforcement there is no opportunity of contesting its validity, a payment of the demand in order to remove such restraint is compulsory, and not voluntary. The distinction to be observed is between a payment made for the purpose of protecting or securing the present enjoyment of a right to which the person is immediately entitled, and a payment made to prevent a threatened disturbance of such right where there is no authority to interfere with its enjoyment until the right of the threatening party shall be established in a

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judicial proceeding in which the rights of the respective parties may be present and determined.

Trower vs. City and County of San Francisco, 152 Cal. 479; affirming *Lewis vs. San Francisco*, 2 Cal. App. 113.

Section 3819 of the Political Code authorizes the recovery of taxes levied by a municipality for an unauthorized purpose, the payment of which was made under protest.

Connelly vs. City and County of San Francisco, 164 Cal. 101.

Under the provisions of the San Francisco charter, as well as by general law, the municipality is authorized to levy a tax only for bonds which have become an obligation of the city. A tax levied for the payment of the interest and the redemption of bonds which had not been sold or contracted to be sold at the time of the levy, is unlawful, and the recovery of the amount paid thereon under protest may be had under the provisions of section 3804 or section 3819 of the Political Code.

Connelly vs. City and County of San Francisco, 164 Cal. 101.

The payment by a quasi-public corporation, bank or insurance company of a corporate license tax illegally exacted of it after the taking effect of section 14 of article XIII of the constitution, in order to avoid a proclamation by the governor of the state, issued in conformity with the provisions of the act of March 20, 1905, declaring that it had forfeited its right and was without authority to do business in the state, was not a voluntary payment, but one compelled under duress of the law. This is true, notwithstanding a declaration of forfeiture under that act, following the proclamation of the governor, would have had no legal efficacy on account of the illegality of the license tax.

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270.

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Taxes, not justly due, paid under protest, may be recovered back.

Falkner, Bell & Co. vs. Hunt, 16 Cal. 167; citing *Hayes vs. Hogan*, 5 Cal. 243; *McMillan vs. Richards*, 9 Cal. 417.

Section 3804 of the Political Code does not authorize the repayment of an amount paid in purchase of property at a void tax sale.

Loomis vs. Los Angeles County, 59 Cal. 456.

An action can not be maintained to recover back money voluntarily paid in satisfaction of an illegal tax.

Younger vs. Board of Supervisors, Santa Cruz County, 68 Cal. 241.

The power to refund taxes erroneously or illegally collected, conferred upon the board of supervisors of a county by section 3804 of the Political Code, is judicial in its nature and not ministerial; and a writ of mandate will not lie against the board to compel them to exercise such power in a particular way.

Younger vs. Board of Supervisors, Santa Cruz County, 68 Cal. 241.

Where property by accident, oversight or mistake has been twice assessed, and taxes twice collected, the moneys collected by mistake must be refunded. The doctrine of *caveat emptor*, as applied to purchasers at tax sales, has no application to cases where the attempted sale for taxes is absolutely void by reason of the taxes having been previously paid.

Hayes vs. County of Los Angeles, 99 Cal. 74. See, also, *Brenner vs. City of Los Angeles*, 100 Cal. 72.

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Section 3819 of the Political Code has no application to the recovery back of taxes paid under protest, which were in fact founded upon special assessments for a specific purpose.

Davis vs. City and County of San Francisco, 115 Cal. 67; affirming *Easterbrook vs. San Francisco*, 44 Pac. Rep. p. 800 (not reported).

Unless otherwise provided by statute, as is the case in this state with relation to state and county taxes (Pol. Code, secs. 3804, 3819), one who pays an illegal demand with full knowledge of its illegality, can not recover it, unless the payment is necessary in order to protect his person or property. This is so, notwithstanding the payment is made under protest.

Hanford Gas and Power Company vs. City of Hanford, 163 Cal. 108; citing *Brumagin vs. Tillinghast*, 18 Cal. 271; *Maxwell vs. San Luis Obispo County*, 71 Cal. 466.

A general allegation in a complaint to recover money paid under an illegal demand of a municipality, that the payment was made "under menace, compulsion and coercion" is not sufficient to show any of such characteristics. The probative facts showing the menace, compulsion, or coercion must be alleged.

Hanford Gas and Power Company vs. City of Hanford, 163 Cal. 108; citing *Phelan vs. San Francisco*, 120 Cal. 5; *Rooney vs. Snow*, 131 Cal. 51; *Lewis vs. San Francisco*, 2 Cal. App. 114.

A purchaser at a delinquent tax sale of government land of the United States, which was not subject to taxation, is a mere volunteer, and can not recover of the county the money so paid by him on the ground that it had been erroneously or illegally collected. Section 3804 of the Political Code does not apply to such cases.

Brooks vs. County of Tulare, 117 Cal. 465; citing *Loomis vs. Los Angeles County*, 59 Cal. 456; distinguishing *Hayes vs. Los Angeles County*, 99 Cal. 74. See, also, *Machado vs. County*, 18 Cal. App. 35.

Section 3819 of the Political Code does not apply to a refund of taxes levied and assessed for the improvement of Dupont street in San Francisco.

Phelan vs. City and County of San Francisco, 120 Cal. 1; citing *Davis vs. San Francisco*, 115 Cal. 68; *Easterbrook vs. San Francisco*, 44 Pac. Rep. p. 800 (not reported).

A complaint in an action against a county to recover taxes paid under protest, by reason of nondeduction of a mortgage to the regents of the state university from the total value of the property, which does not state the value of the property, nor show that a statement of plaintiff's property was demanded by or given to the assessor, and which shows that the plaintiff neglected to make any demand upon the assessor for a deduction from the assessment until after the work of the assessor had been performed, and he had lost jurisdiction to correct it, and also that he neglected to apply to the supervisors for a reduction of the assessment until after they had lost jurisdiction of the matter, states no cause of action.

Henne vs. County of Los Angeles, 129 Cal. 297.

NOTE.—The case of *Henne vs. County of Los Angeles*, 129 Cal. 297, was expressly overruled in *Brenner vs. City of Los Angeles*, 160 Cal. 72.

Money paid under protest for taxes on property not liable to assessment may be recovered, notwithstanding no application is made for correction of the assessor's error before the period of equalization fixed by law has passed.

Brenner vs. City of Los Angeles, 160 Cal. 72; overruling *Henne vs. County of Los Angeles*, 129 Cal. 297.

In the absence of any request for a statement of his taxable property, a mortgagor of real property, which is subject to a recorded mortgage held by the regents

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of the University of California, and which is assessed against him for city taxes of the city of Los Angeles at its full value, without any deduction on account of the mortgage, is entitled to recover the excess taxes levied on the value of the mortgage which had been paid by him under protest upon presenting a verified claim therefor to the city council within six months after the payment. Such excess taxes are taxes "erroneously or illegally collected," within the meaning of the law relating to refunding of taxes.

Brenner vs. City of Los Angeles, 160 Cal. 72.

Section 3804 of the Political Code will require the refunding of taxes erroneously collected, on account of a clerical mistake in listing credits in an excessive sum, which led the assessor to change a truly stated balance without notice to the taxpayer.

Pacific Coast Company vs. Wells, 134 Cal. 471; distinguishing *Phelan vs. San Francisco*, 120 Cal. 1; *Rooney vs. Snow*, 131 Cal. 51; *Hayes vs. County of Los Angeles*, 99 Cal. 74; affirmed in *Brenner vs. City of Los Angeles*, 160 Cal. 72.

In an action based on section 3804 of the Political Code, to recover from the county taxes illegally assessed and collected by the county for road purposes on property situate within the limits of a city, it is not necessary to aver in the complaint nor in the claim presented to the supervisors that the taxes were paid under protest. It is sufficient to aver the facts showing the illegality of the tax collected, and that a verified claim of plaintiff for refunding of the tax was presented to the board of supervisors for allowance, and that they had refused to refund the tax. The remedy given by said section 3804 affords independent relief in all cases coming within its provisions, and is not excluded by the terms of section 3819 of the same code, nor is the plaintiff proceeding under the terms of section 3804, required to proceed in any manner under section 3819.

Stewart Law and Collection Agency vs. County of Alameda, 142 Cal. 660; citing *Hayes vs. County of Los Angeles*, 99 Cal. 74; *Pacific Coast Co. vs. Wells*, 134 Cal. 471; distinguishing *Younger vs. Board of Supervisors*, 68 Cal. 242; *Loomis vs. Los Angeles County*, 59 Cal. 456; *Brooks vs. County of Tulare*, 117 Cal. 465; affirmed in *Brenner vs. City of Los Angeles*, 160 Cal. 72.

Claims for refunding of taxes under section 3804 of the Political Code, as it stood in 1901, must be presented within six months after payment.

Perrin vs. Honeycutt, 144 Cal. 87;

Murphy vs. Bundschu, 2 Cal. App. 249.

Section 3804 of the Political Code has reference only to claims based upon the payment of illegal or excessive taxes, penalties, or costs pursuant to an assessment of property under the provisions of title IX of the Political Code. This is apparent not only from the language of the section itself, but from its location with reference to other code sections.

Trower vs. City and County of San Francisco, 157 Cal. 762; citing *O'Brien vs. County of Colusa*, 67 Cal. 504; *Grimley vs. County of Santa Clara*, 68 Cal. 575; distinguishing *Farmers, etc., Bank vs. City of Los Angeles*, 151 Cal. 655.

The holder of a certificate of purchase of land which has been rejected by the United States, and under which no possession was ever taken, and who has by mistake paid state and county taxes thereon, and who has presented a claim therefor as required by the terms of the Political Code, which has been rejected by the board of supervisors, may maintain an action against the county, under

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section 3804 of the Political Code, to recover the taxes paid, with interest from the date of the rejection of the claim.

Slade vs. County of Butte, 14 Cal. App. 453; citing *Hayes vs. County of Los Angeles*, 99 Cal. 74; *Pacific Coast Co. vs. Wells*, 134 Cal. 471; *Palomares Land Co. vs. County of Los Angeles*, 146 Cal. 530.

The state, in receiving unauthorized taxes on its certificates of purchase of lieu lands, got something for nothing, and is asked to make restitution, which is expressly authorized by section 3804 of the Political Code in such a case as this.

Slade vs. County of Butte, 14 Cal. App. 453.

Where a city acquires property whereon are subsisting liens for state and county taxes, or which, on the first Monday in March was liable for such taxes, and the city pays such taxes under protest it can not recover the same.

City of Santa Monica vs. Los Angeles County, 15 Cal. App. 710.

The provision in the charter of San Francisco that the suspension of the "dollar limit" of taxation in case of great necessity or emergency can be done only "by the unanimous vote of the supervisors," does not require, for such suspension, the unanimous vote of all the supervisors constituting the board, but only the unanimous vote of all who are actually present at the meeting.

San Christina Investment Company vs. City and County of San Francisco, 167 Cal. 762.

In an action to recover taxes paid under protest because in excess of the "dollar limit," an allegation "that no great emergency or necessity existed so as to authorize all or any part of said extra levy," is good as against general demurrer, although it would be subject to special demurrer as the pleading of a legal conclusion.

San Christina Investment Company vs. City and County of San Francisco, 167 Cal. 762.

In an action to recover taxes levied in the city and county of San Francisco in excess of the "dollar limit," a finding that no such great emergency as that contemplated by the charter justified the suspension of the "dollar limit," must be assumed on appeal, in the absence of a bill of exceptions, as supported by the evidence.

Josselyn vs. City and County of San Francisco, 168 Cal. 436. See, also, *Otis vs. City and County of San Francisco*, 170 Cal. 98.

Where a taxpayer seasonably after payment of the taxes so illegally assessed, made a proper demand upon the supervisors for an order for refund of the moneys so paid, as provided by section 3804 of the Political Code, and repeatedly requested the board to take action in the matter, its inaction for a period exceeding six months is so unreasonable as to amount to a rejection of the claim and thus to authorize an action to recover the amount of the taxes illegally collected.

Otis vs. City and County of San Francisco, 170 Cal. 98; *Credit Clearance Bureau vs. City and County of San Francisco*, 170 Cal. 803.

The claim for payment of a judgment for the recovery of certain taxes illegally collected by the city and county of San Francisco is one which is not required to be payable out of the revenues of any particular year or fund, but is a claim that the board of supervisors is bound to audit and approve, and the city is required to pay irrespective of the provisions of the charter relative to the incurring of indebtedness or payment of claims in excess of the revenues of the city for any particular year.

Burr vs. Board of Supervisors of the City and County of San Francisco, 30 Cal. App. 755. See, also, *Arthur vs. Horwege*, 28 Cal. App. 738.

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A judgment against the state, in cases wherein the state has permitted actions to be maintained against it merely liquidates and establishes the claim against the state, and, in the absence of an express statute so providing, such judgment can not be collected by execution against the state or its property, or by any of the ordinary processes of law provided for the enforcement of judgments; it remains for the state, after such judgment, to provide for the payment thereof in such manner as it sees fit, or to refuse to do so at its pleasure, and the judgment creditor can obtain payment in no other way than that provided.

Westinghouse Electric Company vs. Chambers, 169 Cal. 131.

The provision of section 3669 of the Political Code, as amended in 1905 (but prior to the amendment in 1917), which directs that the state controller, in the event of a final judgment being recovered against the state treasurer for the amount of taxes illegally assessed by the state board of equalization and collected by the treasurer, must draw his warrant therefor upon the treasurer, who must pay the same to the judgment creditor, is in conflict with section 22 of article IV of the state constitution, providing that "no money shall be drawn from the treasury, but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the controller," and also with section 34 of the same article, providing that "no bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose, to be therein expressed." It is a kind of legislation that is positively forbidden by the above constitutional provisions, and is therefore void.

Westinghouse Electric Company vs. Chambers, 169 Cal. 131.

The word "recover," when used in connection with actions at law for money, does not necessarily, or even ordinarily, include the actual payment of the money sued for. Ordinarily the word does not include more than the recovery of judgment for the money. As used in subdivision (g) of section 14 of article XIII of the constitution, and in said section 3669, actual payment of the money is not included in its meaning.

Westinghouse Electric Company vs. Chambers, 169 Cal. 131.

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The district attorney is not authorized to institute an action for the collection of delinquent taxes before the certificate of the delinquent list.

County of San Diego vs. California Southern Railroad Company, 65 Cal. 282.

The act of April 23, 1880, authorizing the bringing of suits to recover delinquent taxes, gives the county a right to maintain an action in its own name for delinquent taxes levied for county purposes; and the fact that it might also have sued in the same action for delinquent state taxes, is immaterial, where it does not appear that any other action for the state taxes is then pending or has been prosecuted to judgment.

County of Los Angeles vs. Ballerino, 99 Cal. 593; citing *San Luis Obispo vs. White*, 91 Cal. 432.

An action to recover delinquent taxes is not an action "upon a contract, obligation, or liability, not founded upon an instrument in writing," mentioned in section 339 of the Code of Civil Procedure, which must be brought within two years after the cause of action accrues, but is one which arises upon a liability created by statute, other than a penalty or forfeiture, and is barred by the three years' limitation contained in section 338 of the same code.

County of Los Angeles vs. Ballerino, 99 Cal. 593; citing *San Francisco vs. Luning*, 73 Cal. 610; *Lewis vs. Rothchild*, 92 Cal. 625.

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Section 3899 of the Political Code, which authorizes an action to be brought in the name of the people of the state to recover delinquent taxes under certain circumstances, was not repealed by the act of April 23, 1880, which authorizes counties to sue for delinquent county or state taxes. The remedy given by the act of 1880 is cumulative and not exclusive, and does not deprive the people of the state of the right to maintain such an action under section 3899 aforesaid.

People vs. Ballerino, 99 Cal. 598.

In an action for the collection of delinquent taxes due to the state the court is authorized to include in the judgment such sum for fees of counsel employed by the controller (under section 3670 of the Political Code), as may be determined to be reasonable and just; but no allowance can be made for counsel fees of an assistant counsel engaged by the attorney general.

People vs. Central Pacific Railroad Company, 105 Cal. 576.

Section 3899 of the Political Code authorizes the state to sue for taxes when the amount is three hundred dollars or over. But this is not an authorization to a *county* to sue.

County of Santa Barbara vs. Savings and Loan Society, 137 Cal. 463.

In an action to quiet title against a city, a defense of a lien for delinquent taxes can not be sustained where the right of action for the collection of the taxes (by suit) is lost under the statute of limitations. In such case the lien therefor is extinguished under section 2911 of the Civil Code.

Clark vs. City of San Diego, 144 Cal. 361; citing *City of San Diego vs. Higgins*, 115 Cal. 170; *Dranga vs. Rowe*, 127 Cal. 506.

The remedy given by the statute of 1880 (Statutes of 1880, p. 136) is independent and distinct from the remedy prescribed by section 3899 of the Political Code, relating to suits involving taxes wherein the amount is three hundred dollars or over.

City of Los Angeles vs. Glassell, 4 Cal. App. 43; citing *Los Angeles vs. Ballerino*, 99 Cal. 593.

On questions of the right and power of public officials to compromise taxes, see

County of Sacramento vs. Central Pacific Railroad Company, 61 Cal. 250; *County of San Mateo vs. Oullahan*, 69 Cal. 647.

The remedy provided by section 3819 of the Political Code, of suing to recover void, taxes paid under protest, is not limited, in its application, either by its language or by other statutes, to cases in which the taxpayer wishing to avail himself of it has vainly applied for relief before the assessor has closed his books and before the board of equalization has adjourned.

Brenner vs. City of Los Angeles, 160 Cal. 72; citing *Stewart Law and Collection Company vs. County of Alameda*, 142 Cal. 660; *Pacific Coast Company vs. Wells*, 134 Cal. 471; *Hayes vs. County of Los Angeles*, 99 Cal. 74; *People vs. Board of Supervisors of San Francisco*, 77 Cal. 136.

Where the complaint states a sufficient cause of action to recover an excess of taxes collected by the city defendant from plaintiff and his assignors, the city treasurer is not a necessary party to such action; but it is held that the city could not be prejudiced by the misjoinder of its treasurer, who was a mere agent or ministerial officer to collect the money for the city. Nor can the city complain that no judgment was rendered for or against the treasurer, as the city alone is liable, and has no right to complain of error as to the city treasurer.

Madary vs. City of Fresno, 20 Cal. App. 91.

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XLVI. Taxes. Suits for. XLVII. Taxes. Interest for Delinquency. XLVIII. Tax Collector.

Where an action is brought against a state officer in both his official and individual capacities, and a judgment is rendered against him solely as an individual, he has no right to appeal therefrom in his official capacity. On such an attempted appeal, the court will not consider the question whether or not the action was in legal effect one against the state, which the superior court had no jurisdiction to entertain.

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270.

A reclamation district has neither the right nor the power to collect a delinquent assessment by an ordinary action for the recovery of a personal judgment for money. Assessments by such districts do not have the character of a tax so as to be collectible by execution or levy upon the general property of the owner of the land against which the assessment is made.

Atchison, Topeka and Santa Fe Railway vs. Reclamation Dist. No. 404, 173 Cal. 91.

XLVII. Taxes. Interest for Delinquency.

It is within the power of the legislature to enact that delinquent taxes shall bear interest in the same manner as a debt, and to regulate the rate.

People vs. Reis, 76 Cal. 269.

Interest can not ordinarily be allowed on the amount of unpaid taxes, the five per cent added to the principal sum being the only penalty given by statute.

People vs. Central Pacific Railroad Company, 105 Cal. 576; citing *People vs. North Pacific, etc., Railroad Co.*, 68 Cal. 551.

It is proper to provide in a judgment for taxes that it shall bear interest from the date of its entry, like any other judgment.

People vs. Central Pacific Railroad Company, 105 Cal. 576.

In an action to recover taxes paid under protest, brought pursuant to section 3819 of the Political Code, which contains no provision for the payment of interest, no interest can be allowed.

Savings and Loan Society vs. City and County of San Francisco, 131 Cal. 356.

In an action to recover taxes paid under protest, under section 3819 of the Political Code, interest after payment and before trial is not allowable, and can only be allowed against the county and state from the time of the adjudication declaring the money due.

Miller vs. County of Kern, 150 Cal. 797; citing *Savings and Loan Soc. vs. San Francisco*, 131 Cal. 356; *Columbia Savings Bank vs. Los Angeles*, 137 Cal. 471. See, also, *Kern Valley Water Co. vs. County of Kern*, 150 Cal. 801; *Miller vs. County of Kern*, 137 Cal. 516.

XLVIII. Tax Collector.

Where the office of tax collector is consolidated with another, both are deemed separate offices.

People vs. Edwards, 9 Cal. 286.

Where the sheriff is ex officio tax collector, they are separate and distinct offices, and the under sheriff may not sign and execute a tax deed.

Lathrop vs. Brittain, 30 Cal. 880; citing *People vs. Love*, 25 Cal. 528; *People vs. Edwards*, 9 Cal. 292.

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XLVIII. Tax Collector. XLIX. Delinquent List. Publication.

The office of sheriff and tax collector, although held by the same person, are separate and distinct offices.

People vs. Ross, 38 Cal. 76; citing *Lathrop vs. Brittain*, 30 Cal. 680; *People vs. Love*, 25 Cal. 520; *People vs. Edwards*, 9 Cal. 286.

A tax collector who fails to pay money into the treasury at the time required by law will be compelled to do so by writ of mandate.

People vs. Austin, 46 Cal. 520.

It is the duty of the tax collector, under the code, on the first Monday in each month, to pay to the county treasurer all moneys collected by him as taxes for the state and county, even if the tax is illegal, and the money is paid to the tax collector under protest.

City and County of San Francisco vs. Ford, 52 Cal. 198; distinguishing *People vs. Austin*, 46 Cal. 520.

The office of sheriff and tax collector are distinct, and require separate bonds, though held by the same person.

People vs. Burkhardt, 76 Cal. 606; citing *People vs. Ross*, 38 Cal. 76; *County of Butte vs. Morgan*, 76 Cal. 1; *People vs. Edwards*, 9 Cal. 292.

The notice by the tax collector required by section 3746 of the Political Code, as to the time when the tax will be due and payable, though desirable, is not essential to the validity of the assessment.

Miller vs. County of Kern, 137 Cal. 516.

The entire failure of a tax collector to give the notice to taxpayers required by section 3746 of the Political Code will not render a tax deed invalid.

Miller vs. County of Kern, 150 Cal. 797. See, also, *Miller vs. County of Kern*, 137 Cal. 516.

The return of an execution and the sheriff's certificate of sale are not invalid because purporting to have been executed by the sheriff by and through an under sheriff. The phrase "under sheriff" means a deputy of a sheriff; it is merely another name for "deputy sheriff," and the two phrases describe the same officer.

Shirran vs. Dallas et al., 21 Cal. App. 405.

NOTE.—Where the office of sheriff and tax collector is a consolidated county office, the "under sheriff" can not execute a tax deed. See *Lathrop vs. Brittain*, 30 Cal. 680, and cases cited therein.

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The publication of the delinquent tax list is not a condition precedent to the vesting of the tax. The obligation to pay the tax does not exist by force of this provision. If the property be omitted from the delinquent list, this does not discharge the property holder, but is a defect which may be remedied by the legislature.

Morre vs. Patch, 12 Cal. 265;

Cowell vs. Doub, 12 Cal. 273.

The penalty of five per cent is not a substitute for the tax or a penalty for its nonpayment, but is an inducement to pay the tax when due.

High vs. Shoemaker, 22 Cal. 363.

When a statute requires that the delinquent tax list, together with the time and place of sale of the property for the delinquent tax, shall be published in a paper in the city or county, or in a supplement to such paper, such list, time, and place, if published in a supplement, must be published in one the circulation of which is coextensive with that of the paper both in and out of the city and county.

Tully vs. Bauer, 52 Cal. 487.

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A tax deed is conclusive evidence that proof was made of publication by filing with the clerk and recorder of the county, the affidavit required by section 3769 of the Political Code.

Haaren vs. High, 97 Cal. 445; citing *Rollins vs. Wright*, 93 Cal. 395.

In section 3764 of the Political Code, requiring the delinquent list to contain the amount of taxes and costs due, opposite each name and description, "with the taxes due on personal property added to the taxes on real estate," the word "added" does not contemplate a mathematical calculation, but merely that the amount of the personal property tax be subjoined or appended to the taxes on the real estate.

California Loan and Trust Company vs. Weis, 118 Cal. 489.

A tax deed is evidence that the tax collector had prepared a delinquent list for the year for which the land assessed was sold for taxes.

Davis vs. Pacific Improvement Co., 137 Cal. 245;

Davis vs. Pacific Improvement Co., 7 Cal. App. 452.

The description of the property delinquent need not be identically the same as in the assessment roll; and it is sufficient if the delinquent list gives such a general description as will identify the property and notify the owner of the land that the taxes thereon are delinquent, and that the lot is to be sold.

Davis vs. Pacific Improvement Co., 137 Cal. 245;

Davis vs. Pacific Improvement Co., 7 Cal. App. 452.

It is not necessary in the delinquent list to state separately the items of taxes, penalties and costs charged against the property. A statement of the total amount is sufficient.

Chapman vs. Zoberlein, 152 Cal. 216; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234. See, also, *Chapman vs. Zoberlein*, 19 Cal. App. 132.

The irrigation law (Stats. 1887, p. 40) in regard to the delinquent list and notice simply provided that the delinquent list must contain "the amount of the assessments and costs due opposite each name and description." A statement of the aggregate amount of all assessments, percentage for delinquency, and costs appears to be a literal compliance with this requirement. It has been held with regard to state and county taxes that, under a statute requiring the delinquent list to state "the amount of taxes, penalties, and costs due, opposite each name and description," it is not necessary to state separately the items of taxes, penalties, and costs, a statement of the total amount being all that the law requires.

Best vs. Wohlford, 153 Cal. 17; citing *Chapman vs. Zoberlein*, 152 Cal. 216.

See, also, *Best vs. Wohlford*, 144 Cal. 733.

The law makes a distinction between "penalties for delinquency" in the payment of taxes and "penalties on redemption." Under section 3816 of the Political Code, the state is entitled to its just proportion of the latter penalties, while the former penalties all belong to the county.

Honeycutt vs. Colgan, 3 Cal. App. 348.

Where the delinquent list, as published, contained an erroneous statement of an amount of taxes, penalties, and costs in excess of the sum authorized by law, a sale made thereunder to the state, though made for the correct sum, is void. In tax proceedings, in order to divest title, a strict compliance with the law is essential. The exact sum required by law must be stated in the delinquent list; and the smallest deviation therefrom, in an excessive statement, is fatal.

Warden vs. Broome, 9 Cal. App. 172; citing *Fox vs. Wright*, 152 Cal. 59; *Ellis vs. Wilmer*, 134 Cal. 249; *Davis vs. Pacific Improvement Co.*, 137 Cal. 245; *Simmons vs. McCarthy*, 118 Cal. 622; *Treadwell vs. Patterson*, 51 Cal. 637; *Shipman vs. Forbes*, 97 Cal. 572.

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The contents of the delinquent list are a part of the notice of sale, and an unauthorized notice constitutes no notice. The notice of sale required by law is jurisdictional in order to constitute due process of law, as a condition of transferring the title to the state; and the deed to the state can not be conclusive evidence of the performance of the acts necessary to confer jurisdiction.

Warden vs. Broome, 9 Cal. App. 172.

Under section 3885 of the Political Code a tax sale is not rendered invalid by reason of the publication of the delinquent tax list on a day succeeding the time when the publication is required by section 3764 of that code nor by the fact that the statement attached to the published delinquent list had no affidavit attached showing its verification.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Buswell vs. Supervisors*, 116 Cal. 354.

Improvements on land are not personal property on which a penalty of fifty cents may be charged. Such improvements are included in the term "real estate." They are not a separate lot or parcel of real estate, upon which such penalty may be imposed merely because the improvements are separately assessed. They are part and parcel of the land upon which they are erected; and section 3770 of the Political Code authorizes a penalty of fifty cents "on each lot, piece or tract of land separately assessed."

Rimmer vs. Hotchkiss, 14 Cal. App. 556; citing *Warden vs. Broome*, 9 Cal. App. 172. See, the case of *Rimmer vs. Hotchkiss*, Cal. App. Dec. Vol. 12, No. 597, March 25, 1911.

Section 3770 of the Political Code, directing the tax collector to collect, in addition to the taxes due on the delinquent list, together with the penalties for delinquency, "fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property," does not authorize him to collect a charge of fifty cents on account of the assessment of the improvements situated on the land assessed, notwithstanding such improvements, by section 3627 of the Political Code, are required to be assessed separately from the land.

Rimmer vs. Hotchkiss, 162 Cal. 385;

Rimmer vs. Hotchkiss, 14 Cal. App. 556;

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

The inclusion in the amount for which land was sold to the state for delinquent taxes of a charge of fifty cents on account of the assessment of the improvements on the land renders such sale excessive, and invalidates it and the deeds founded thereon.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356;

Rimmer vs. Hotchkiss, 162 Cal. 385; citing *Canty vs. Staley*, 41 Cal. Dec. 483. See, also, *Rimmer vs. Hotchkiss*, 14 Cal. App. 556.

Section 3770 of the Political Code does not authorize a separate fifty cent charge for improvements on land where there was a single assessment of the land with the improvements thereon, with the respective values of the land and improvements stated in separate columns. The limit of the charge in such case is fifty cents for both land and improvements. An additional charge of fifty cents is authorized for an assessment of personal property.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356; citing *Rimmer vs. Hotchkiss*, 162 Cal. 390.

When a delinquent poll tax, due from the person whose property is assessed, is shown on the delinquent roll, section 3800 of the Political Code, providing that where a person assessed for a property tax has not paid his poll tax, it constitutes

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a lien upon the property assessed to such person, and must be collected in the same manner and at the same time as delinquent taxes are collected, does not authorize an additional advertising charge of fifty cents on account thereof. The inclusion of such a charge in the amount for which the assessed land was sold to the state, renders the sale, and a subsequent sale by the state, invalid.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

The statement as to a poll tax contained on the delinquent roll is not an "assessment" of property at all, but is simply a statement as to a tax and a penalty thereon, which, with other taxes and penalties, are to be enforced against the property assessed. It is a matter required to be shown on the delinquent roll, with delinquent state, road, and hospital tax, by section 3764 of the Political Code, in order that all taxes constituting liens on the property assessed may be collected or enforced against such property.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

L. Delinquent List. Authority for Publication.

The publication of the delinquent list comes under "county printing" for which the supervisors may contract.

Times Publishing Company vs. County of Alameda, 64 Cal. 469.

A tax collector has no authority to contract for the publication of the delinquent tax list; but the only authority for such publication is vested, by section 3766 of the Political Code, as amended in 1895, in the supervisors, who must contract with the lowest bidder after ten days' public notice: nor does the neglect of the supervisors to perform their duty vest authority in the tax collector to contract for its publication.

Smeltzer vs. Miller, 113 Cal. 163; citing *Times Pub. Co. vs. Alameda County*, 64 Cal. 469; *Journal Pub. Co. vs. Whitney*, 97 Cal. 283; *Mendocino County vs. Bank*, 86 Cal. 255; *Ex parte Benjamin*, 65 Cal. 310.

The tax collector has no authority to contract for the publication of the delinquent tax list, and where the board of supervisors of the county did not contract for the publication thereof with the lowest bidder after ten days' public notice, in pursuance of section 3766 of the Political Code, such board has no authority to allow and approve a claim for the publication thereof by order of the tax collector.

Harris vs. Cooke, 119 Cal. 454; citing *Smeltzer vs. Miller*, 113 Cal. 163.

The board of supervisors has no power to make a contract for the printing of the delinquent tax list without a previous advertisement for bids, as required by statute.

Smeltzer vs. Miller, 125 Cal. 41; affirming *Smeltzer vs. Miller*, 113 Cal. 163; distinguishing *Power vs. May*, 114 Cal. 207.

The action of the board of supervisors in awarding a contract for the printing of the delinquent tax list, and in allowing a claim therefor, is a conclusive adjudication of a subject-matter within its jurisdiction.

County of Santa Cruz vs. McPherson, 133 Cal. 282; citing *Lamberson vs. Jeffords*, 118 Cal. 363; *McFarland vs. McCowen*, 98 Cal. 329; *Colusa County vs. DeJarnatt*, 55 Cal. 373; *McConoughey vs. Jackson*, 101 Cal. 265; *McBride vs. Newlin*, 129 Cal. 36.

The provisions of section 25 of subdivision 21 of the county government act relating to printing and advertising done for county officers by a newspaper, being inconsistent with section 3766 of the Political Code, and later in date, have worked a repeal of that section.

Van Harlingen vs. Doyle, 134 Cal. 53.

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Under section 25, subdivision 21, of the county government act of 1897, the tax collector has authority to procure the advertising of the delinquent tax list at a price no greater than that annually fixed by the supervisors.

Dodge vs. Kings County, 150 Cal. 96; distinguishing *Van Harlingen vs. Doyle*, 134 Cal. 53.

The *prima facie* showing made through proof of the collector's deed that notice of delinquency was duly published is not overcome by testimony that the numbers of a certain newspaper had been examined and that the notice was found in but one issue, where it is not shown that the notice was published in such newspaper.

Corson vs. Crocker, 31 Cal. App. 626.

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A newspaper published six days in each week is a daily newspaper.

Richardson vs. Tobin, 45 Cal. 30.

Where a statute requires notice to be published in a daily newspaper, but does not specify a particular language in which it must be published, a publication in a German newspaper, but in the English language, is sufficient.

Richardson vs. Tobin, 45 Cal. 30.

An act which required that a notice inviting certain proposals should be published daily (Sundays excepted), in a daily newspaper, for five days; *held*, that a publication commencing Wednesday, March 4th, and ending Sunday, March 8th, was insufficient. The last publication should have been on the 9th.

Alameda Macadamizing Company vs. Huff, 57 Cal. 331; citing *People vs. McCain*, 50 Cal. 210, and 51 Cal. 360.

The provisions of section 3447 of the Political Code, that the petition for the formation of a swamp land district "be published for four weeks next preceding the hearing thereof," etc., requires the petition to be published at least once a week, or, in other words, every seven days for that period. Accordingly, where the day fixed for the hearing was June 17th, and the publication was made May 20th, May 27th, June 4th and June 12th, the publication was insufficient, there being two intervals of more than seven consecutive days in the publication.

Williams vs. Board of Supervisors, Sacramento County, 58 Cal. 237.

A provision requiring a municipal ordinance to be published for five successive days in a daily newspaper is complied with by such publication five successive week days, although a Sunday intervened on which there was no issue of the paper.

Ex parte Fiske, 72 Cal. 125.

A statutory requirement that a particular notice shall be published in a newspaper is sufficiently complied with by a publication in a sheet of the paper denominated a "supplement," which is circulated coextensively with the balance of the paper.

Lent vs. Tillson, 72 Cal. 404.

The insolvency act required the clerk to publish a notice requiring the creditors to meet on a specified day, not less than thirty days from the first publication of the notice; *held*, that a publication, the first of which appeared on December 7, 1878, and the return day fixed for January 6, 1879, is sufficient.

Dean vs. Grimes, 72 Cal. 442; citing *Wilson vs. Creditors*, 55 Cal. 476.

Section 1537 of the Code of Civil Procedure, requiring a notice of the sale of real estate of a decedent to be published for "three weeks successively," simply indicates the time during which the sale must be advertised, and not the manner of the publication. The phrase "three weeks successively" evidently means the

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same thing as "three successive weeks." The word "successively" refers to weeks, and not to the publication of the paper.

Estate of Cunningham, 73 Cal. 558.

The provision that the election proclamation shall be published "for three weeks prior to the election" designates the period of publication only, and not the number of insertions.

Central Irrigation District vs. De Lappe, 79 Cal. 351; *In re Cunningham*, 73 Cal. 558.

In matters of taxation and assessment, the state is not bound to accord personal service of process upon the citizen.

Wulzen vs. Board of Supervisors of City and County of San Francisco, 101 Cal. 15.

Where the statute requires a publication for "at least two weeks," a publication from October 6th to October 19th, both days inclusive, is a sufficient compliance with the statute.

Derby vs. City of Modesto, 104 Cal. 515; citing *Savings and Loan Soc. vs. Thompson*, 32 Cal. 347; *Misch vs. Mayhew*, 51 Cal. 514; *Hagenmeyer vs. Mendocino County*, 82 Cal. 217.

Where there is no date or event suggesting the exclusion of the first day's publication in the computation of time it is to be included, and the rule stated in section 12 of the Code of Civil Procedure does not apply in such case.

Derby vs. City of Modesto, 104 Cal. 515.

In computing the time constituting the period embraced within the statute of limitations, the day of the maturity of the obligation sued upon should be excluded.

First National Bank of Long Beach vs. Ziegler, 24 Cal. App. 503.

A weekly publication of a notice, beginning on the 27th of June, and ending on the 25th of July, of an election to be held on the 27th of July, is a sufficient compliance with the requirement of the statute for a publication for a period of thirty days prior to the election.

Mintzer vs. Schilling, 117 Cal. 361; citing *Derby vs. Modesto Irr. Dist.*, 104 Cal. 515; *Bates vs. Howard*, 105 Cal. 182.

Under section 30 of the act providing for the organization of reclamation districts (Stats. 1867-68, p. 507), requiring the petition therefor to be published "for four weeks next preceding the hearing thereof in some newspaper published in the county," a publication thereof once a week in a daily newspaper published in the county, for four weeks next preceding the hearing, is a sufficient compliance with the law.

People vs. Reclamation District No. 136, 121 Cal. 522; distinguishing *Hellman vs. Merz*, 112 Cal. 661.

An act required that notice of awards of contracts by the board of supervisors should be published five days. It was published but without a previous order of the board. *Held*, that the publication of notice was void (*Donnelly vs. Tillman*, 47 Cal. 40; *Donnelly vs. Marks*, 47 Cal. 187; *Napa vs. Easterby*, 61 Cal. 509; *Shipman vs. Forbes*, 97 Cal. 572). It is mandatory upon the council to designate the paper, and a publication in some paper not designated would in effect be no publication.

Chase vs. City Treasurer of Los Angeles, 122 Cal. 540; citing *Hewes vs. Reis*, 40 Cal. 255.

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Under the provisions of the municipal bonding act (Stats. 1901, p. 27), that the ordinance calling the election for the authorization of the bonds shall be published "once a week for two weeks in some newspaper published less than six days a week in such municipality, and one insertion each week for two succeeding weeks shall be a sufficient publication in such newspaper," a publication in a weekly newspaper in its successive issues on June 14 and June 21, 1911, for an election to be held on June 26, 1911, is sufficient. The statute only requires that two weeks' notice of the election shall be given in the single case where, by reason of the fact that there is no newspaper published in the municipality, the notice is given by posting.

City of Lindsay vs. Mack, 160 Cal. 647.

Where the regular publication of a daily was omitted on Sundays and holidays, the publication of the resolution therein upon the days of its regular issue is sufficient; and no publication need be made in an extra issue of half size published upon a particular holiday on account of a strike.

Perine vs. Lewis, 128 Cal. 236.

What constitutes "ten days' notice" under section 1118 of the Code of Civil Procedure in election contests. A statement of contest was filed on December 1, 1902, and the order of court fixing hearing was made on that day, fixing the 11th of that month for the hearing. This was "not less than ten days."

Hannah vs. Green, 143 Cal. 19; citing *Misch vs. Mayhew*, 51 Cal. 514; *Wilson vs. Creditors*, 55 Cal. 476; *Dean vs. Grimes*, 72 Cal. 442.

Under section 12 of the Political Code, in computing the time of notice the first day of publication is excluded.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Hannah vs. Green*, 143 Cal. 19; *Misch vs. Mayhew*, 51 Cal. 514; *Wilson vs. Creditors*, 55 Cal. 476; *Dean vs. Grimes*, 72 Cal. 442.

Where the date set for the meeting was March 4, 1903, a publication of the notice in the issues of the newspaper appearing on the 10th and 17th of February, 1903, constituted the required publication of "at least two weeks" before the meeting.

Sherwood vs. Wallin, 154 Cal. 735.

It is settled in this state that a requirement that a notice be published for a designated number of weeks in some newspaper is fully satisfied by a publication once a week for the designated number of weeks in a daily newspaper.

Sherwood vs. Wallin, 154 Cal. 735; citing *People vs. Reclam. Dist.* 121 Cal. 522; *Chapman vs. Zoberlein*, 152 Cal. 216; *Derby vs. Modesto Irr. Dist.* 104 Cal. 515.

An application for a decree under section 4462 of the Political Code, to establish that a newspaper is one entitled to official advertising, which shows on its face that it has been published less than one year, states no cause of action.

Matter of the Application of Devlin-Judah Company, 12 Cal. App. 403.

A newspaper published at weekly intervals more than two years, but which, within less than three months before the application to have it established as a newspaper of general circulation, was changed to a daily, is not thereby changed as to its efficiency, nor precluded from being established as a "newspaper printed and published at regular intervals for at least one year," within the meaning and purpose of section 4460 of the Political Code, defining a "newspaper of general circulation."

Matter of the Tribune Publishing Company, etc., 12 Cal. App. 754.

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Where a newspaper had been published in San Pedro for more than two years prior to its annexation to Los Angeles, but had been published in Los Angeles less than one year after such annexation when the petition was filed to have it established as a newspaper of general circulation, entitled to official advertising in the city of Los Angeles, the superior court erred in establishing it as such on account of its prior circulation in San Pedro. The intention of the statute is to require that a newspaper selected for public advertising of a city shall be one published within such city, and that it shall have been known as a newspaper of such city for a period of at least one year.

Matter of the Application of W. C. Miller and "San Pedro Daily News,"
15 Cal. App. 43.

Section 4460 of the Political Code does not require, in order for a newspaper to be established as one of general circulation, that it shall publish both local and telegraphic news. The requirement is "local *or* telegraphic" news and intelligence of a general character. Moreover, whether a newspaper is one of general circulation is a matter of substance and not of size, and depends largely upon the diversity of its subscribers rather than upon mere numbers. The mere fact that it makes a speciality of some particular class of business and conveys intelligence of particular interest to those engaged in such business does not deprive it of that character.

In re Application of Green, 21 Cal. App. 138.

A stipulation in a deed of trust that the publication of notice of sale thereunder is to be once a week for four successive weeks, contemplates a publication for four weeks of seven days each; a sale by the trustee within twenty-eight days from the first publication is without authority, although in fact four publications are had prior to the sale.

Seccombe vs. Roe, 22 Cal. App. 139; citing *Townsend vs. Tallant*, 33 Cal. 45; *Williams vs. Board of Supervisors of Sacramento County*, 58 Cal. 237; *Reclamation District No. 765 vs. McPhee*, 13 Cal. App. 382.

The publication of a petition for incorporation of a city of the sixth class, reciting that the same will be presented on September 20th, in the issues of September 13th and 20th of a weekly newspaper, is a sufficient publication for two weeks, and fulfills the requirement of the statute.

Hoffecker vs. Board of Supervisors of Los Angeles County, 23 Cal. App. 405; citing *Sherwood vs. Wallin*, 154 Cal. 735.

A requirement that a notice be published for a designated number of weeks in some newspaper published in the county is fully satisfied by a publication once each week for the designated number of weeks in a daily newspaper published in the county. The same is true when the newspaper is only of weekly publication.

Hoffecker vs. Board of Supervisors of Los Angeles County, 23 Cal. App. 405.

Where the newspaper in which the notices of the street improvement were published was widely circulated in the city where the work was to be done, the mere fact that the building in which the paper was printed was situated on the boundary line between that city and an adjoining city, the presses being situated in the former and the offices and editorial room in the latter place, did not invalidate the publication of the notices.

Stanwood vs. Carson, 169 Cal. 640.

The provision of section 18 of the Street Opening Act (Stats. 1903, p. 376), that notice of the filing of the assessment shall be given by "publication for at least ten days in a daily newspaper," does not require any specific number of publications. It designates a period of time during which the publication is to

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be made, and intervening Sundays on which no publications were had are properly counted as a part of this period.

Tilton vs. Russek, 171 Cal. 731.

A notice of the time for presenting a petition to incorporate a city under the act of 1883 (Stats. 1883, p. 93), and amendments thereto, which stated that such petition would be presented to the board of supervisors on *Tuesday*, April 5th, is sufficient, notwithstanding the day of the week corresponding with April 5th was *Wednesday*.

Cole vs. Board of Supervisors of Orange County, 27 Cal. App. 528.

Where the day of the week named in a notice does not correspond with the day of the month specified therein, the latter controls, and the day of the week may be discarded as surplusage.

Cole vs. Board of Supervisors of Orange County, 27 Cal. App. 528.

LII. Tax Sales.

Proceedings to sell property for taxes are to be strictly followed, and if there is any material irregularity in the assessment or in the subsequent proceedings, the sale, and the certificate and deed based thereon, are absolutely void.

Holland vs. Hotchkiss, 162 Cal. 336.

Proceedings on tax sales are *strictissimi juris* (affirming *Ferris vs. Coover*, 10 Cal. 632), and the fact that a tax deed is *prima facie* evidence of certain facts, makes it none the less obligatory to comply with the law.

Kelsey vs. Abbott, 13 Cal. 609;

Ferris vs. Coover, 10 Cal. 632.

Tax proceedings are still in *invitum*, in this state, and to be valid must be in strict accord with statutory requirements.

Seecombe vs. Louis Phillips Estate, 162 Cal. 161; citing *Miller vs. Williams*, 135 Cal. 184; *Fox vs. Townsend*, 152 Cal. 51; distinguishing *Davis vs. Pacific Improvement Company*, 137 Cal. 250; *Best vs. Wohlford*, 144 Cal. 734; *Fox vs. Wright*, 152 Cal. 60; *Bank of Lemoore vs. Fulgham*, 151 Cal. 236.

An officer making a sale under naked statutory power, and a purchaser at such sale must show that every preliminary step has been followed.

Keane vs. Cannovan, 21 Cal. 291.

Under the revenue act of 1859, in a tax sale, an offer of a purchaser to take "one-eighth interest in," or "fourteen feet of," a certain lot, the sale is void for uncertainty, and the defect can not be cured by inserting a proper description in the certificate of sale or in the tax deed.

Roberts vs. Chan Tin Pen, 23 Cal. 259.

Property sold for taxes must at the time of the sale be liable for the entire amount of the tax for which it was sold, or the sale will be void.

Bucknall vs. Story, 36 Cal. 67; citing *Hardenburg vs. Kidd*, 10 Cal. 404.

A sale made under a valid, though erroneous judgment, which has not been reversed or set aside, is valid.

Moore vs. Martin, 38 Cal. 428.

A purchaser of property at a sheriff's sale under execution is only required to show a sale, and the authority of the officer to make it; the judgment and execution prove the latter, and the deed the former.

Blood vs. Light, 38 Cal. 649.

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A purchaser of land at a tax sale, made under a judgment enforcing a lien for a tax, which judgment is regular on its face, is not affected by any matters outside the judgment of which he had no actual notice.

Stokes vs. Geddes, 46 Cal. 17.

The logical result of the decision in *Houghton vs. Austin*, 47 Cal. 646, is that the whole of section 3696 of the Political Code, is unconstitutional and void, *per se*.

Wills vs. Austin, 53 Cal. 152;

Harper vs. Rowe, 53 Cal. 233.

If land be sold for taxes, a part of which are valid and a part illegal, the whole sale and the tax deed will be void.

Wills vs. Austin, 53 Cal. 152.

A purchaser of property at a tax sale, which is invalid by reason of irregularity in the proceedings for the levy and the sale, acquires no right to the property which a court of law or equity can enforce.

Greenewood vs. Adams, 80 Cal. 74.

The burden of proof is upon the plaintiff in an action to prove the alleged irregularities and violations of law which vitiates the tax sales sought to be avoided and canceled.

Baxter vs. Vineland Irrigation District, etc., 136 Cal. 185.

It is presumed that official duty was regularly performed, and that a sale advertised for Sunday, and which took place on Monday, was postponed as authorized by law.

Baxter vs. Vineland Irrigation District, etc., 136 Cal. 185.

Assuming that a tax deed would be invalidated by proof that the specific amount for which the land was declared therein to be sold to the state was twenty cents in excess of the taxes and costs due on the property, the burden of proof is on the party assailing the deed to establish such fact, unless the evidence thereof is furnished by the deeds themselves from the tax collector to the state or from the state to the purchaser of the land.

Campbell vs. Shafer, 162 Cal. 206.

Where the land leased was sold to the state for taxes, and the right of the lessor to redeem after the execution of a deed to the state was foreclosed by the state's conveyance of the title to another owner, such owner has the right to receive the rents.

Teich vs. Arms, 5 Cal. App. 475.

A sale made by the tax collector on a legal holiday is not void, in the absence of a statutory prohibition against it, and if otherwise made according to law is effectual to dispose of the state's title to one who pays the purchase money.

Young vs. Patterson, 9 Cal. App. 469.

The provisions of section 3767 of the Political Code, to the effect that a sale for delinquent taxes must not be less than twenty-one nor more than twenty-eight days from the time of the first publication of the notice of sale, is sufficiently complied with by a sale which is noticed for and had on the 18th day of June, 1897, in pursuance of a notice which was first published on the preceding 28th day of May. Under section 12 of the Political Code, in computing the time of notice the first day of

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publication is excluded, and a sale had on the twenty-first day thereafter accords with the requirement of the statute.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Hannah vs. Green*, 143 Cal. 19; *Misch vs. Mayhew*, 51 Cal. 514; *Wilson vs. Creditors*, 55 Cal. 476; *Dean vs. Grimes*, 72 Cal. 442. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

A slight mistake made by the tax collector in computing the amount of taxes and costs, by which the property was sold for a small sum more than the amount actually due, does not invalidate the sale.

O'Grady vs. Barnhisel, 23 Cal. 287.

If a sale of land for a delinquent tax is made for a sum in excess of the tax and legal costs, the sale is void, unless the excess is less than the smallest fraction coin authorized by law.

Treadwell vs. Patterson, 51 Cal. 637; citing *Bucknall vs. Story*, 36 Cal. 67.

A sale of land for a sum in excess of that authorized by law is void.

Harper vs. Rowe, 53 Cal. 233; citing *Treadwell vs. Patterson*, 51 Cal. 637. See, also, *Main vs. Thornton*, 20 Cal. App. 194; *Rimmer vs. Hotchkiss*, 162 Cal. 385.

A tax sale for one dollar in excess of the amount authorized by law is void.

Axtell vs. Gerlach, 67 Cal. 483; citing *Harper vs. Rowe*, 53 Cal. 236; *Treadwell vs. Patterson*, 51 Cal. 637.

On a sale for taxes levied under the act of April 15, 1880, providing for the protection of lands subject to overflow, an item of fifty cents for the cost of preparing the delinquent list, and an item of fifty cents for the cost of the certificate of sale, included in the amount for which the property was sold, are illegal charges, and fatal to the validity of the sale, and the execution of a deed to the purchaser will be restrained by injunction, for the reason that the items included in the amount for which the sale was made are not required to be specified therein.

Axtell vs. Gerlach, 67 Cal. 483.

Proceedings for the enforcement of assessments under street improvement acts are proceedings *in invitum*, which must be strictly followed else a sale in pursuance thereof will pass no title to the purchaser.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

The right of redemption, under the street improvement act of 1899 (Stats. 1899, p. 40), is a substantial right given to a delinquent owner, and it can be secured to him only by a strict compliance with its terms whereby just the quantity of land impressed with the assessment lien shall be sold and no more.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

A tax sale for an amount in excess of what is lawfully chargeable is without jurisdiction and void.

Boston Tunnel Company vs. McKenzie, 67 Cal. 485; citing *Treadwell vs. Patterson*, 51 Cal. 637; *Bucknall vs. Story*, 36 Cal. 67.

A sale of property for taxes for an amount in excess of the tax legally due thereon, and costs, is void.

Knox vs. Higby, 76 Cal. 264; citing *Bucknall vs. Story*, 36 Cal. 67; *Treadwell vs. Patterson*, 51 Cal. 637; *Harper vs. Rowe*, 53 Cal. 236; *Axtell vs. Gerlach*, 67 Cal. 483; *Boston Tunnel Co. vs. McKenzie*, 67 Cal. 485. See, also, *Main vs. Thornton*, 20 Cal. App. 194; *Rimmer vs. Hotchkiss*, 162 Cal. 385.

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The fact that the amount of taxes and costs recited in the certificate of sale is fifty cents less than that recited in the tax deed will not vitiate the tax sale or tax deed, or show that the sale was for a sum in excess of the taxes, and legal costs. If the property was in fact sold for an excessive sum, that fact may be shown to invalidate the sale; but the presumption is in favor of the regularity of official action.

Doland vs. Mooney, 79 Cal. 137. See, also, *Doland vs. Mooney*, 72 Cal. 34.

A tax deed reciting that the amount of taxes levied on the property was \$7.50, and that the costs and charges which have since accrued thereon amount to the further sum of \$1.37, and also that the purchaser was the bidder who was willing to take the least quantity of the land and pay the taxes, costs and charges due thereon, "which taxes, costs and charges, including fifty cents for a certificate of sale, amounted to the sum of \$8.84," and that the land was sold to the purchaser, "who paid the full amount of said taxes, costs and charges," is void, for failure to definitely state the amount paid for the land, it being doubtful therefrom whether the amount paid was \$8.84 or \$8.87. In such a case the maxim *de minimis* does not apply.

Simmons vs. McCarthy, 118 Cal. 622;

Simmons vs. McCarthy, 128 Cal. 455.

The maxim *de minimis* does not apply to a small excess in a sale for taxes; and where lands were sold for an excess of eight cents in taxes, percentages, and costs, claimed by the city, and for an excess of \$1.60 in those claimed by the county, the sale and the deed executed thereunder were void.

Miller vs. Williams, 135 Cal. 183; citing *Axtell vs. Gerlach*, 67 Cal. 483;

Treadwell vs. Patterson, 51 Cal. 637; *Harper vs. Rowe*, 53 Cal. 236; *Bucknall vs. Story*, 36 Cal. 67; *Simmons vs. McCarthy*, 118 Cal. 625.

NOTE.—*Miller vs. Williams*, on several points, was affirmed in *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530; *San Diego Realty Co. vs. Cornell*, 150 Cal. 637; *Wright vs. Fox*, 150 Cal. 680; *Fox vs. Townsend*, 152 Cal. 51; *Chapman vs. Zoberlein*, 152 Cal. 216, and distinguished in *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Townsend*, 152 Cal. 51; *Hotchkiss vs. Hansberger*, 15 Cal. App. 603.

A recital in a tax deed as to the amount for which the property was sold which shows the total amount due for taxes, penalties, costs, and charges at the time of the sale, is sufficiently certain.

Baird vs. Monroe, 150 Cal. 560; distinguishing *Simmons vs. McCarthy*, 118 Cal. 622. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

In the published delinquent list of unpaid taxes, the employment of numerals to represent dollars and cents, without having prefixed thereto the dollar-mark is sufficient, where the meaning and use of the numerals were fully explained in the publication itself.

Fox vs. Wright, 152 Cal. 59; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 284; distinguishing *People vs. Hastings*, 34 Cal. 571; *Ellis vs. Witmer*, 134 Cal. 249.

The publication of a delinquent tax list is not rendered ineffectual because the dollars and cents were not indicated by the figures purporting to state the amount charged against the property, where there was a note at the bottom of the list fully explaining the figures.

Chapman vs. Zoberlein, 152 Cal. 216; affirming *Carter vs. Osborn*, 150 Cal. 620.

A condensed description in a delinquent list of the property assessed, which consists only in the use of common abbreviations, is permissible, if thereby the property may be easily known.

Rollins vs. Woodman, 117 Cal. 516.

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Though the notice of sale in irrigation matters and assessments is that to which the taxpayer is absolutely entitled, and is not concluded by the deed, yet the use therein of "ditto marks" and abbreviations which could not mislead and which are explained in the notice, do not affect its validity or the sufficiency of its compliance with the law.

Best vs. Wohlford, 153 Cal. 177.

In one case the first publication was made on June 3, 1898, and the day fixed in the notice for the sale was June 24, 1898, and in the other case the first publication was made on June 3, 1899, and the day fixed for the sale was June 24, 1899. This was a sufficient compliance with the law in both cases.

Stanton vs. Hotchkiss, 157 Cal. 652; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 238.

An assessment of a mortgage on real property can not be in excess of its face value, and a tax sale based upon such an excessive valuation is invalid.

Webster vs. Somer, 159 Cal. 459.

Real property acquired by the state under a sale to it for delinquent taxes can not be subsequently sold by it under an order of the state controller, if the legal title thereto, excepting such title as the state acquired by the tax collector's deed, has in the interim become vested in a municipal corporation under condemnation proceedings for a public purpose.

Smith vs. City of Santa Monica, 162 Cal. 221.

A sale of land for delinquent taxes for anything more than is lawfully chargeable is a sale without jurisdiction and is void. The maxim, *De minimis non curat lex*, applies to a tax sale only in a limited sense, and does not apply to prevent the validity of a sale for delinquent taxes for any appreciable excess in amount.

Rimmer vs. Hotchkiss, 14 Cal. App. 556; citing *Treadwell vs. Patterson*, 51 Cal. 637; *Bucknall vs. Story*, 36 Cal. 67; *Harper vs. Rowe*, 53 Cal. 233, 236; *Axtell vs. Gerlach*, 67 Cal. 483; *Boston Tunnel Co. vs. McKenzie*, 67 Cal. 485, 490; *Knox vs. Higbie*, 76 Cal. 264, 267; *Simons vs. McCarthy*, 118 Cal. 622, 625; *Miller vs. Williams*, 135 Cal. 183, 184; *Warden vs. Broome*, 9 Cal. App. 172. See, also, *Rimmer vs. Hotchkiss*, 162 Cal. 385.

Improvements on land are not personal property on which a penalty of fifty cents may be charged. Such improvements are included in the term "real estate." They are not a separate lot or parcel of real estate, upon which such penalty may be imposed merely because the improvements are separately assessed. They are part and parcel of the land upon which they are erected; and section 3770 of the Political Code authorizes a penalty of fifty cents "on each lot, piece or tract of land separately assessed."

Rimmer vs. Hotchkiss, 14 Cal. App. 556; citing *Warden vs. Broome*, 9 Cal. App. 172. See, also, *Rimmer vs. Hotchkiss*, 162 Cal. 385.

Although the law does not require that a deed for delinquent taxes to the state shall contain anything more than the insertion of a statement of the total amount of the taxes, penalties, and costs, yet, where such deed does contain an itemized statement of taxes, penalties, and costs, showing a segregation thereof, with a designation of the amount of each, going to make up the total sum for which the property was sold, and thus shows that the sale was for an excessive amount, the deed is void upon its face. The fact that the excess of the penalties and costs thus shown was the sum of \$1.40 does not affect the invalidity of the deed. It is not enough to say that the excess is trifling. The maxim *de minimis* has no

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application to proceedings to transfer title by virtue of statutory proceedings for the enforcement of a tax *in invitum*.

Hotchkiss vs. Hansberger, 15 Cal. App. 603; citing *Treadwell vs. Patterson*, 51 Cal. 639, and cases therein cited; *Harper vs. Rowe*, 53 Cal. 233; *Axtell vs. Gerlach*, 67 Cal. 483; *Boston Tunnel Co. vs. McKenzie*, 67 Cal. 485; *Knox vs. Higbie*, 76 Cal. 246; *Simmons vs. McCarthy*, 118 Cal. 622; *Miller vs. Williams*, 135 Cal. 183.

We may parenthetically observe that no authorities have come to our attention as to the precise legal effect upon the sale of property (to the state) for less than the total amount of the tax and accruing costs and penalties. The code requires that the sale shall be for the amount of the tax, penalties and costs, and it is, of course, very clear that the tax collector has absolutely no more authority to sell it for less than for more than that amount. Upon principle, we should say, if it were necessary to decide the question here, that a sale for less than the total amount due the state for taxes, penalties and costs would be void, since it would not be a sale according to law, and, besides, it is very clear that the state would thus be defrauded of its just dues.

Hotchkiss vs. Hansberger, 15 Cal. App. 603.

The recitals in a deed of land sold to the state for delinquent taxes are not evidence of the amount of taxes, costs, and charges actually due, and a recital of the amount for which the property was sold to the state furnishes no evidence that such amount was in excess of the actual amount due for taxes, costs, and charges.

Rimmer vs. Hotchkiss, 162 Cal. 385;

Campbell vs. Shafer, 162 Cal. 206;

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

See, also, *Rimmer vs. Hotchkiss*, 14 Cal. App. 556.

Section 3770 of the Political Code, directing the tax collector to collect, in addition to the taxes due on the delinquent list, together with the penalties for delinquency, "fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property," does not authorize him to collect a charge of fifty cents on account of the assessment of the improvements situated on the land assessed, notwithstanding such improvements, by section 3627 of the Political Code, are required to be assessed separately from the land.

Rimmer vs. Hotchkiss, 162 Cal. 385;

Rimmer vs. Hotchkiss, 14 Cal. App. 556;

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

The inclusion in the amount for which land was sold to the state for delinquent taxes of a charge of fifty cents on account of the assessment of the improvement on the land renders such sale excessive, and invalidates it and the deeds founded thereon.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356;

Rimmer vs. Hotchkiss, 162 Cal. 385; citing *Canty vs. Staley*, 41 Cal. Dec. 483. See, also, *Rimmer vs. Hotchkiss*, 14 Cal. App. 556.

Section 3770 of the Political Code does not authorize a separate fifty cent charge for improvements on land, where there was a single assessment of the land with the improvements thereon, with the respective values of the land and improvements stated in separate columns. The limit of the charge in such case is fifty cents for both land and improvements. An additional charge of fifty cents is authorized for an assessment of personal property.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356; citing *Rimmer vs. Hotchkiss*, 162 Cal. 390.

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LII. Tax Sales. LIII. Certificates of Sale.

When a delinquent poll tax, due from the person whose property is assessed, is shown on the delinquent roll, section 3860 of the Political Code, providing that where a person assessed for a property tax has not paid his poll tax, it constitutes a lien upon the property assessed to such person, and must be collected in the same manner and at the same time as delinquent taxes are collected, does not authorize an additional advertising charge of fifty cents on account thereof. The inclusion of such a charge in the amount for which the assessed land was sold to the state, renders the sale, and a subsequent sale by the state, invalid.

Hall vs. Park Bank of Los Angeles, 165 Cal. 356.

The owner of real property may have the title thereto quieted as against a purchaser at a tax sale, if the assessment roll was not authenticated by the auditor as required by section 3732 of the Political Code.

Henderson vs. Ward, 21 Cal. App. 521; citing *Miller vs. County of Kern*, 137 Cal. 516 and 150 Cal. 797; distinguishing *Steele vs. County of San Luis Obispo*. See, also, *Brady vs. Bostwick*, 21 Cal. App. 526; *Henderson vs. Burke*, 21 Cal. App. 526; *Henderson vs. Bostwick*, 21 Cal. App. 797; *Moyer vs. Taylor*, 21 Cal. App. 797; *Moyer vs. Wilson*, 166 Cal. 261; *Moyer vs. De Witt*, 166 Cal. 780.

NOTE.—In connection with authentication of assessment roll, see "validating act," approved April 1, 1915 (Stats. 1915, p. 23), cited herein under section 3682 of the Political Code, *ante*.

The tax collector can not make a valid sale of real property on account of delinquent taxes until he has received from the auditor the tax rolls authenticated by the affidavit required by section 3732 of the Political Code. Moreover, the mere proof of the existence of the requisite facts which might have been set forth in the auditor's affidavit to tax rolls, can not supply the want of such affidavit and validate a tax sale when there was no affidavit.

Henderson vs. Ward, 21 Cal. App. 520.

Where a municipal ordinance of a city of the fifth class required notice of the sale of property for delinquent taxes to be published, and that the place of sale should be "at the city hall," a notice designating the "City Hall" as the place of sale, without further particularization, can not be held indefinite or uncertain as matter of law.

Hinds vs. Clark, 173 Cal. 49.

A property owner can not maintain an action to enjoin the sale of his land for nonpayment of a valid (irrigation assessment, on account of irregularities in the proceedings had after the levy looking to the collection of the assessment without first paying or offering to pay the amount justly due.

Imperial Land Company vs. Imperial Irrigation District, 173 Cal. 660.

Upon a sale to the state of school lands for nonpayment of taxes followed by a deed to the state therefor, all rights of defaulting purchasers in such lands are extinguished, and the only method by which they can be restored to their former rights is by compliance with the law existing at the time of making application for such restoration.

Curtin vs. Kingsbury, 31 Cal. App. 57.

LIV. Certificates of Sale.

If the recorder has a place in his office where certificates of sale are kept, and a given certificate is not kept in that place but in another and different place, the filing does not give notice to third parties of its existence or contents.

Dissenting opinion of Shafter, J., in *Page vs. Rogers*, 31 Cal. 293.

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A sheriff may voluntarily correct his return of a tax sale after the return has been filed, but he can not be compelled by the court to correct the return against his will.

Hewell vs. Lane, 53 Cal. 213.

The certificate of sale is not evidence of any matters not therein recited, nor of any matter necessarily preceding its valid existence.

Hall vs. Theisen, 61 Cal. 524.

Where the certificate of sale to the state contained a correct description of the land, and was not subject to the defects alleged in the assessment, its record imparted constructive notice to a purchaser of the land, and the title taken is subject thereto, and the purchaser is subject to the requirement upon the original owner, that he who seeks equity must do equity.

Grant vs. Cornell, 147 Cal. 565; citing *Couts vs. Cornell*, 147 Cal. 560; *Oglesby vs. Hollister*, 76 Cal. 140; *Hearst vs. Egglestone*, 55 Cal. 367; *Hager vs. Spect*, 52 Cal. 584.

Under section 3776 of the Political Code, a certificate of sale for delinquent taxes is not invalidated for failure to separately set forth the amount of the penalties, costs, and charges. That section only requires the amount of the assessment to be stated in the certificate.

Bank of Lemoore vs. Fulgham, 161 Cal. 234;

Schamblin vs. Means, 6 Cal. App. 261;

Phillips vs. Cox, 7 Cal. App. 308.

Upon the repeal of section 3776 of the Political Code (Statutes 1895, p. 19), providing for a certificate of sale for land sold to the state for delinquent taxes, the provisions of section 3786 of that code, to the effect that the deed to the state must contain a recital of the matters contained in the certificate, became nugatory.

Fox vs. Townsend, 152 Cal. 51;

Schamblin vs. Means, 6 Cal. App. 261;

Phillips vs. Cox, 7 Cal. App. 308.

NOTE.—By an act approved February 25, 1895, section 3776 of the Political Code was repealed; at the same session of the legislature, by act approved March 28, 1895 (Statutes 1895, p. 327), the section was amended, after its repeal as aforesaid. An amendment of a repealed section is nugatory. Therefore, by act approved April 1, 1897 (Statutes 1897, p. 432), the section was re-enacted and added.

The provision of section 3776 of the Political Code requiring the certificate of sale to state "the amount and year of the assessment" can not reasonably be construed as requiring it to recite the amount of taxes, or taxes and costs and charges due at the time of the sale. That requirement is the same as the requirement of section 3785 of that code, that the deed shall give "the assessed value and year of the assessment," and does not refer to the amount of tax, or taxes, costs, etc., due.

Campbell vs. Shafer, 162 Cal. 206; affirming *Griggs vs. Hartzoke*, 13 Cal. App. 429.

Under section 3785 of the Political Code, requiring a tax deed to the state to recite "the time when the right of redemption had expired," a deed is not invalid by reason of reciting that the time of redemption expired on a specified date which was one day after the last day of the redemption period.

Deets vs. Hall, 163 Cal. 249; distinguishing *Baird vs. Monroe*, 150 Cal. 560; *Stanton vs. Hotchkiss*, 157 Cal. 652. See, also, *Knight vs. Hall* and *Hall vs. Tucker*, 28 Cal. App. 435.

REVENUE LAWS OF CALIFORNIA.

LIII. Certificates of Sale. LIV. Injunction.

The case of *Baird vs. Monroe*, 150 Cal. 560, did not decide any question as to whether a date given in the deed there as to the time when the right of redemption had expired was correctly stated or not. In that case the deed contained no recital of any date at all and whether it was void on that ground the court was not called upon to decide as it sustained the validity of the deed under the curative act of 1903.

Deets vs. Hall, 163 Cal. 249.

In a certificate of sale and tax deed made to the state thereunder the naming of either the last day of the period or the first day of the time succeeding it, as a recital of "the time when the right of redemption had expired," will be good, under the peculiar wording of the statute.

Deets vs. Hall, 163 Cal. 249, concurring opinion of Justices Shaw, Angellotti and Sloss.

Under the requirements of section 26 of the Street Opening Act (Stats. 1903, p. 376), a certificate of sale reciting that "the purchaser or his assignee will be entitled to a deed of said property at any time after the expiration of twelve months from the said date of sale, upon giving notice of application therefor as provided by law, unless said property shall be sooner redeemed," sufficiently states when the purchaser will be entitled to a deed.

Tilton vs. Russek, 171 Cal. 731.

The failure of a certificate of sale for delinquent municipal taxes of the city of Bakersfield to correctly state the time "when the city will be entitled to a deed," as was required by a city ordinance—the defect consisting in fixing the date one day too soon, by making it coincide with the date on which the right of redemption would expire—renders the certificate void, and annuls the subsequent proceedings.

Hinds vs. Clark, 173 Cal. 49; citing *Hughes vs. Cannedy*, 92 Cal. 382; *Simmons vs. McCarthy*, 118 Cal. 622.

In an action by the owner to quiet his title against a person claiming under such a defective certificate of sale, it is immaterial that several years elapsed after the expiration of the period of redemption and before the plaintiff commenced the action.

Hinds vs. Clark, 173 Cal. 49.

Under the provisions of the irrigation act (Stats. 1897, p. 254), requiring that the collector must make out in duplicate a certificate of sale of property sold for delinquent assessment "dated on the day of sale," a certificate is not void because dated on a day subsequent to the sale, where it is recited therein that the property may be redeemed within twelve months from the date of sale, which date of sale is stated in the recital.

Corson vs. Crocker, 31 Cal. App. 626.

LIV. Injunction.

The question of *taxation* only is one at common law, not in equity, and injunction should not issue.

Minturn vs. Hays, 2 Cal. 590;

Robinson vs. Gaar, 6 Cal. 273;

Fremont vs. County of Mariposa, 11 Cal. 361.

A taxpayer can not enjoin the collection of a tax due the county, on the ground that he has in former years paid into the county treasury taxes assessed on his property which were illegally assessed and collected.

Fremont vs. County of Mariposa, 11 Cal. 361.

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LIV. Injunction.

Where irreparable injury to person or property will be cast by the enforcement of a tax law, injunction will issue to restrain such act.

Fremont vs. Boling, 11 Cal. 380.

A taxpayer may not enjoin the collection of a tax on the ground that notice of the meeting of the board of equalization was not published, unless he shows error in the assessed value.

Cowell vs. Doub, 12 Cal. 273.

A court will not restrain a sale for taxes when it is apparent on the face of the proceedings upon which the purchaser must rely to make out a *prima facie* case to enable him to recover under the sale, that the sale would be void. In such a case he has a perfect remedy at law. The principle is, that a proceeding which appears upon inspection to be void constitutes no cloud.

Bucknall vs. Story, 36 Cal. 67; citing *DeWitt vs. Hays*, 2 Cal. 469; *Burr vs. Hunt*, 8 Cal. 307; *Robinson vs. Gaar*, 6 Cal. 275; *Berri vs. Patch*, 12 Cal. 299; *Weber vs. San Francisco*, 1 Cal. 455; *Hardenburg vs. Kidd*, 10 Cal. 403.

Courts of equity will not interfere by injunction to restrain the sale of property for delinquent taxes, unless it appears that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, and the sale casts a cloud upon the title.

Savings and Loan Society vs. Austin, 46 Cal. 415;

Houghton vs. Austin, 47 Cal. 646;

People vs. Austin, 46 Cal. 520;

Central Pacific Railroad Co. vs. Corcoran, 48 Cal. 65.

An injunction will not be granted to restrain the collection of a tax by a sale of the property of the taxpayer. Before a court of equity will lend its aid in such case it must be made to appear that, after a sale, a deed is about to be executed which will cast a cloud on the title.

Houghton vs. Austin, 47 Cal. 646;

Savings and Loan Society vs. Austin, 46 Cal. 415;

Central Pacific Railroad Co. vs. Corcoran, 48 Cal. 65.

An injunction will not be granted to restrain the collection of a tax by a sale of real estate of the taxpayer.

Central Pacific Railroad Co. vs. Corcoran, 48 Cal. 65; affirming *Savings and Loan Society vs. Austin*, 46 Cal. 415; *Houghton vs. Austin*, 47 Cal. 646.

Although a court of equity will interfere by injunction to prevent a cloud from being cast on title, yet it is not deemed necessary to exercise such authority to the injury of strangers. It is discretionary with courts to grant an injunction to restrain a sheriff's sale because it will cast a cloud upon title. After the sale is made, and the delivery of a deed is threatened, the injunction may be properly issued.

Goldstein vs. Kelly et al., 51 Cal. 301.

An injunction will not be granted to restrain the collection of a tax, when it does not appear that the *complainant* would sustain irreparable injury, or the sale would cast a cloud on the title. This rule is applicable to an assessment for a local improvement as well as to a state and county tax.

Dean vs. Davis et al., 51 Cal. 406; citing *Savings and Loan Society vs. Austin*, 46 Cal. 448; *Houghton vs. Austin*, 47 Cal. 646.

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An injunction will not be issued to prevent a sale for taxes on an assessment of property administered by the regents of the state university.

Hollister vs. Sherman, 63 Cal. 38.

It is well settled, as a general rule, that where an officer is about to sell real property to enforce the collection of a delinquent tax the court of equity will interpose to restrain the sale, if, when consummated, it would cast a cloud upon the title. The true test as to whether a cloud would be cast is: would the owner of the property in an action in ejectment brought by the adverse party, founded upon the deed, be required to offer evidence to defeat a recovery. This test has been many times affirmed.

Chase vs. City Treasurer of Los Angeles, 122 Cal. 540; citing *Pixley vs. Huggins*, 15 Cal. 128.

It is well settled that a court will not restrain the sale for taxes when it is apparent that the sale would be void on the face of the proceedings upon which the purchaser must rely to make out a *prima facie* case to enable him to recover under the sale (*Bucknall vs. Story*, 36 Cal. 71, and cases there cited). But a different aspect is presented where there is nothing upon the face of the assessment to show that the lien is not in all respects valid. It is obvious to defeat such an assessment or such a deed the plaintiff must resort to evidence extraneous of any recital to be found in it. In such case, therefore, injunction is the proper remedy.

Chase vs. City Treasurer of Los Angeles, 122 Cal. 540; citing *Bolton vs. Gilleran*, 105 Cal. 244.

An injunction will not be granted to restrain the street superintendent of the city of Los Angeles from selling real property in that city under a void sale to satisfy a void assessment for opening a street. His deed under such sale would be void, and would cast no cloud upon the plaintiff's title.

Burne vs. Drain, 127 Cal. 663; citing *Savings and Loan Society vs. Austin*, 46 Cal. 415; *Williams vs. Corcoran*, 46 Cal. 553; *Houghton vs. Austin*, 47 Cal. 646; *Dean vs. Davis*, 51 Cal. 406; *Lent vs. Tillson*, 72 Cal. 401; *Esterbrook vs. O'Brien*, 98 Cal. 671.

The equitable remedy by injunction will not be granted to restrain proceedings of officers to enforce a tax under the laws of the state merely on the ground that the tax sought to be enforced is illegal, unless it appears necessary to protect the rights of the property owner and that he has no adequate remedy at law. Acts not casting a cloud upon the title of the taxpayer will not be enjoined; and no cloud upon real property can be created by mere sale of the property to the state before the time comes for the execution of a deed to the state.

Crocker vs. Scott, 149 Cal. 575; citing *Savings and Loan Society vs. Austin*, 46 Cal. 415, 488; *Houghton vs. Austin*, 47 Cal. 646, 650, 666; distinguishing *Maskey vs. Lackmann*, 146 Cal. 777.

Where a county is divided so that part of an existing school district falls in the new county, the board of supervisors of the new county is without authority to order the annexation of that portion of the district to one of its own districts, and if such order is made, the district to which the annexation is thereby attempted is without authority to levy taxes upon the property so annexed. Moreover, if such a tax is levied, an owner of land affected thereby is entitled to an injunction against a sale of his property for nonpayment of the tax.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580; distinguishing *Savings and Loan Society vs. Austin*, 46 Cal. 415; *Houghton vs. Austin*, 47 Cal. 647; *Crocker vs. Scott*, 149 Cal. 575.

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LIV. Injunction. LV. Redemption.

Regardless of its merit or want of merit in other respects, a court of equity will not grant an application for an injunction to restrain the doing of any act, single and complete in its nature that has already been performed at the time of the hearing of the application.

Wright vs. Board of Public Works of the City of Los Angeles, 163 Cal. 328.

LV. Redemption.

Where lands are assessed to several persons jointly, the owner of an undivided portion may pay his proportion of the tax and thus release his portion of the land from the lien of the tax; but unless he makes this payment before a sale is made of the land under a judgment recovered for the tax this right is gone, and a redemption can only be effected by a payment of the entire judgment and all charges.

People vs. McEwen, 23 Cal. 54;

Mayo vs. Marshall, 23 Cal. 594.

NOTE.—As to "partial" payment and redemption, see sections 3747 and 3818 of the Political Code.

"Months" used in the statute fixing period of redemption in judicial sales, means calendar, not lunar.

Gross vs. Fowler, 21 Cal. 392.

A sheriff's deed which was executed before the expiration of the six months allowed for redemption, after a sale on execution or order of sale on judgment of foreclosure, is void for want of power to execute it at that time.

Bernal vs. Gleim, 33 Cal. 668; citing *Gross vs. Fowler*, 21 Cal. 392.

A person redeeming from a tax sale, under a judgment recovered for the tax, must pay the whole amount of the judgment, even if he owns only an undivided interest in the land; but the payment does not redeem any land other than that which the redemptioner owned at the time of the tax sale.

Quinn vs. Kenney, 47 Cal. 147.

The right of redemption comes entirely from the statute, and is subject to all the limitations and conditions imposed by the statute.

Quinn vs. Kenney, 47 Cal. 147.

The power of the sheriff in relation to redemption is purely statutory, and his acts are nugatory unless the provisions of the statute are followed.

Wilcoxon vs. Miller, 49 Cal. 193.

If insufficient money is paid to the county treasurer to redeem land sold for taxes, and the payment is made for the purpose of effecting a redemption, and a receipt is taken, the redemption is effected, even if the receipt is not filed with the recorder and recorded by him.

Cooper vs. Shepardson, 51 Cal. 298.

In an action to quiet title the defendant claimed under an execution sale, made October 5, 1874, and a sheriff's deed executed in pursuance of the sale, April 5, 1875. Held, that the sheriff's deed was void, and that the judgment debtor had the whole of the 5th day of April, 1875, within which to redeem.

Perham vs. Kuper, 61 Cal. 381; citing *Gross vs. Fowler*, 21 Cal. 392; *Bernal vs. Gleim*, 33 Cal. 668; *Moore vs. Martin*, 38 Cal. 428; *Hall vs. Yoell*, 45 Cal. 584.

A person claiming the right to redeem land from a tax sale, under an alleged mortgage lien which was absolutely extinguished by the lapse of time before the

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tax sale was made, is not such a party in interest as is entitled to redeem the land, under sections 3780 and 3817 of the Political Code.

Hughes vs. Cannedy, 92 Cal. 382; citing *Wells vs. Harter*, 56 Cal. 342; *Henderson vs. Grammar*, 66 Cal. 335.

One who is the owner in fee, and in the possession of the lots sold, retains the right of redemption indefinitely, until a notice is given and a deed applied for in accordance with the provisions of section 3785 of the Political Code.

Hughes vs. Cannedy, 92 Cal. 382.

To extend the time for redemption is to alter the substance of the contract, and *a fortiori* would a law giving a right to redeem when by the law under which the purchase was made the right to the deed had become absolute.

Rollins vs. Wright, 93 Cal. 395.

It is not the policy of the state to increase the burden of taxation beyond the necessary cost of collection, or to impose any greater burdens in a redemption from a delinquent tax sale than is necessary to secure the payment of the original tax.

San Francisco and Fresno Land Company vs. Banbury, 106 Cal. 129.

But if the state has become the purchaser of land at a delinquent tax sale, the tax has been extinguished by the sale, and the state, instead of being a creditor of the taxpayer, or entitled to receive any money due it for taxes, has acquired an interest in the land, which is to be divested only by some affirmative action on the part of the delinquent taxpayer.

San Francisco and Fresno Land Company vs. Banbury, 106 Cal. 129.

The redemption of land sold to the state for delinquent taxes is governed by the law in force at the date of the sale; and, upon a redemption made after the passage of the act of March 28, 1895 (amending section 3817 of the Political Code), of land sold for delinquent taxes prior thereto, the owner entitled to redeem is not required to pay the amount fixed by that act.

Teralta Land and Water Company vs. Shaffer, 116 Cal. 518; distinguishing *Tuolumne Red. Co. vs. Sedgwick*, 15 Cal. 515; *Hibernia, etc. vs. Hayes*, 56 Cal. 303; *Oullahan vs. Sweeney*, 79 Cal. 537. See, also, *Thresher vs. Atchison*, 117 Cal. 73.

Though the legislature evidently intended, by the language used in the act of March 28, 1895 (amending section 3817 of the Political Code), to make it apply to sales for delinquent taxes to the state theretofore as well as thereafter, yet is is beyond the power of the legislature, after a tax sale, to impose more onerous conditions upon the right to redeem than those which existed when the sale was made; and the retroactive provision of said act is unconstitutional and void in so far as it purports to impair the vested right of redemption, which was a condition of the contract of purchase when made.

Teralta Land and Water Company vs. Shaffer, 116 Cal. 518;

Thresher vs. Atchison, 117 Cal. 73.

A law is void which extends the time for the redemption of lands sold on execution, or for delinquent taxes after the sales have been made; for in such a case the contract with the purchaser, and for which he has paid his money, is that he shall have title at the time when provided by the law, and to extend the time for a redemption is to alter the substance of the contract.

Teralta Land and Water Company vs. Shaffer, 116 Cal. 518;

Thresher vs. Atchison, 117 Cal. 73.

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The legislature can not, after a tax sale, lawfully amend the law so as to apply new and more onerous conditions to the right to redeem than those which existed when the sale was made.

Teralta Land and Water Company vs. Shaffer, 116 Cal. 518.

After the lapse of the period allowed by law for redemption from a tax sale, the court has no jurisdiction to allow the sheriff to amend his return, so as to make valid an otherwise invalid sale, and deprive the owner of his right to redeem, he having had the right to rely upon the invalidity of the return in failing to redeem from the sale; and an order thereafter made allowing such amendment is void.

McGrath vs. Wallace, 116 Cal. 548.

Where land was sold for taxes to the state, March 16th, for non-payment of taxes which became delinquent in December of the previous year, the personal property taxes for the ensuing year, which could not have been a lien upon the land when the taxes for which it was sold became delinquent, can not be included in the amount required to redeem the property from the state.

San Diego, etc., Railway Company vs. Shaffer, 137 Cal. 103.

The redemption of land sold to the state for taxes is governed by the law in force at the date of the sale.

Collier vs. Shaffer, 137 Cal. 319; citing *Teralta Land and Water Company vs. Shaffer*, 116 Cal. 518.

The interest provided for in section 3817 of the Political Code, as it stood 1883-1895, is to be computed upon the taxes due, and not upon the penalties or costs. Upon a sale made for taxes in 1890 the only penalty which "accrued by reason of the delinquency and sale," was fixed at five per cent, and the provision of section 3817 (1883-1895) for "twenty-five per cent penalty, which may have accrued by reason of such delinquency and sale," must be held to mean the five per cent penalty under section 3756 of the Political Code (1876-1891), and which must be calculated upon the amount of the original taxes. The taxes for subsequent years should be computed at the rate fixed therefor, *but on the same valuation as that fixed for the year of the delinquency and sale*; and no penalty should be imposed upon such taxes, but legal interest should be computed thereon.

Collier vs. Shaffer, 137 Cal. 319.

In matters of redemption the legislature could not by amendment impose greater or additional burdens upon a party desiring to redeem, but it could relieve him of burdens.

Collier vs. Shaffer, 137 Cal. 319; citing *Oullahan vs. Sweeney*, 79 Cal. 538.

Under section 3817 of the Political Code, as amended in 1895, providing for redemption of lands sold to the state for taxes, the interest should be computed upon the *taxes due thereon at the time of sale, and not upon any penalties or costs*.

San Diego Investment Company vs. Shaffer, 137 Cal. 323.

The original amount of taxes, with interest thereon at the rate of seven per cent per annum, and a penalty upon said *original amount* if redeemed within six months, twenty per cent if within one year, and so on, as the statute provides, is all that can be claimed on the amount of the taxes due at the time of sale. *To this is to be added the amount of taxes based upon the rate and valuation for each succeeding year after the sale and prior to redemption.* These amounts are to draw interest at the rate of seven per cent per annum from the first day of January after such taxes for the succeeding years become due, respectively. The penalties as provided in the redemption section shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year if there had been no previous sale thereof.

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The penalties to be computed upon the *amount of taxes* for the succeeding years as if they had been actually sold at the time provided for such sale, if there had been no previous sale.

San Diego Investment Company vs. Shaffer, 137 Cal. 323.

The state has assumed the burden of delinquent taxes upon land by becoming purchaser thereof; and a county is not authorized to institute a suit for the collection of delinquent taxes upon real property in any case. The right of the taxpayer to redeem from the state within five years can not be cut off or limited by any action on the part of the county.

County of Santa Barbara vs. Savings and Loan Society, 137 Cal. 463.

In redeeming from a sale of lands to the state for unpaid taxes, the amount of all the taxes, the tax of the year for which the land was sold, whether state and county or school taxes, must be paid, with interest, costs, and penalties thereon, though the assessment for that year was technically void. But no interest is required to be paid upon the costs of sale.

Palomares Land Company vs. County of Los Angeles, 146 Cal. 530; affirming *San Diego Investment Company vs. Shaffer*, 137 Cal. 323.

In the payment of taxes for *subsequent years*, upon redemption, the payment of penalties thereon depends upon the validity of the assessments. If no valid assessment is made for any year there can be no penalty thereon, though the unassessed property must pay taxes upon its value for that year as assessed in the year nearest the time of redemption.

Palomares Land Company vs. County of Los Angeles, 146 Cal. 530.

The time for the redemption of real property from a sale under execution upon a judgment rendered in an action upon contract must be governed by the law in force when the contract was made and the judgment was rendered thereupon; and a subsequent change of statute, extending the time for redemption, before levy and sale under execution upon such judgment, can not apply to a redemption from such sale, since to give it that effect would be to impair the obligation of the contract.

Welsh vs. Cross, 146 Cal. 621; overruling *Moore vs. Martin*, 38 Cal. 428.

See, also, *Savings Bank, etc. vs. Barrett*, 126 Cal. 417; *Haynes vs. Treadway*, 133 Cal. 400; *Malone vs. Roy*, 134 Cal. 344.

The law in force at the time of a sale for taxes regulates the right of redemption therefrom; and it is not within the power of the legislature to take away that right, or judicially to affect it, by subsequent legislation.

Johnson vs. Taylor, 150 Cal. 201; citing *Miller vs. Miller*, 96 Cal. 376; *Reed vs. Lyon*, 96 Cal. 501; *Walsh vs. Burke*, 134 Cal. 594; *Collier vs. Shaffer*, 137 Cal. 319; *Hughes vs. Cannedy*, 92 Cal. 382; *Teralta L. and W. Co. vs. Shaffer*, 116 Cal. 518; overruling *Tuolumne Red. Co. vs. Sedgwick*, 15 Cal. 517, and *Moore vs. Martin*, 38 Cal. 428; affirming *Welsh vs. Cross*, 146 Cal. 621.

The right of the property owner to redeem from the sale to the state remains until the state has disposed of the land. He is, therefore, entitled to object to having his right of redemption cut off by any sale by the state other than one made in accordance with the direct requirement of the law.

Jordan vs. Beale, 172 Cal. 226; citing *Smith vs. Furlong*, 160 Cal. 522; *Campbell vs. Moran*, 161 Cal. 325; *Wright vs. Anglo-Californian Bank*, 161 Cal. 500.

The right to redeem from a tax sale to the state is cut off when such property has been duly sold by the tax collector, under the provisions of section 3897 of the Political Code.

Young vs. Patterson, 9 Cal. App. 469.

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Appellant's point is: That, although the lot in question, by virtue of the creation of Orange County in 1889, is now located in that county, the taxes for 1887 were levied and the sale of the lot made and the deed therefor executed to the state by the tax collector of the county of Los Angeles, and that the right of redemption was to be exercised in Los Angeles and not Orange County, and defendant attempted to redeem the same from the sale to the state through the county auditor of Los Angeles County. Point not decided.

Wetherbee vs. Johnston, 10 Cal. App. 264.

Sales of state school lands after payment of delinquent taxes under section 3788 of the Political Code, or redemption under section 3817 of the same code. But one payment or cancellation of the tax required.

Coffin vs. Kingsbury, 12 Cal. App. 567.

The method provided by the amendment of 1909 to section 3788 of the Political Code (repealed by the act of 1915, Stats. 1915, p. 605), of enforcing payment of interest as a condition to the repurchase or redemption of school lands sold for non-payment of taxes is not more burdensome than the former method of foreclosure.

Curtin vs. Kingsbury, 31 Cal. App. 57.

Where a transfer of the title from the state is shown to be invalid, the right of redemption by the taxpayer from the state still continues.

Smith vs. Furlong, 160 Cal. 522.

One having the mere inchoate right to redeem land, the title of which has been conveyed to the State of California for non-payment of taxes, can not maintain an action to quiet title as against a party in possession under claim of title.

Sears vs. Willard, 165 Cal. 12.

The right or redemption, under the street improvement act of 1899 (Stats. 1899, p. 40), is a substantial right given to a delinquent owner, and it can be secured to him only by a strict compliance with its terms, whereby just the quantity of land impressed with the assessment lien shall be sold, and no more.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

In an action by one claiming under a tax title from the state to quiet his title against the former owners in possession and their mortgagee, where the evidence and findings show that the property was first sold to the state for the second installment of taxes for the fiscal year 1897-98, and afterward in 1899, for taxes for the fiscal year 1898-99, and that the property was redeemed after the first sale, by the mortgagee, by payment of the amount required therefor, on December 31, 1898, as certified by the auditor, including the taxes for the fiscal year 1898-99, which were then a lien upon the property, the court properly found that at the time of the second sale there was no delinquency upon the property, and that the tax title based thereon is void.

Boyer vs. Gelhaus, 19 Cal. App. 321.

Under section 3785 of the Political Code, requiring a tax deed to the state to recite "the time when the right of redemption had expired," a deed is not invalid by reason of reciting that the time of redemption expired on a specified date which was one day after the last day of the redemption period.

Deets vs. Hall, 163 Cal. 249; distinguishing *Baird vs. Monroe*, 150 Cal. 560; *Stanton vs. Hotchkiss*, 157 Cal. 652. See, also, *Knight vs. Hall—Hall vs. Tucker*, 21 Cal. App. 388.

The case of *Baird vs. Monroe*, 150 Cal. 560, did not decide any question as to whether a date given in the deed there as to the time when the right of redemption

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had expired was correctly stated or not. In that case the deed contained no recital of any date at all and whether it was void on that ground the court was not called upon to decide as it sustained the validity of the deed under the curative act of 1903.

Deets vs. Hall, 163 Cal. 249. See, also, *Knight vs. Hall*, 28 Cal. App. 435.

In a certificate of sale and tax deed made to the state thereunder the naming of either the last day of the period or the first day of the time succeeding it, as a recital of "the time when the right of redemption had expired," will be good, under the peculiar wording of the statute.

Deets vs. Hall, 163 Cal. 249—concurring opinion of Justices Shaw, Angellotti and Sloss.

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The act of 1885, requiring the purchaser at a tax sale to give to the owner thirty days' notice of the application for a deed, and extending the time until such notice is given, is constitutional, and applies to all applications for deeds made after the act took effect.

Oullahan vs. Sweeney, 79 Cal. 537; citing *Tuolumne Red. Co. vs. Sedgwick*, 15 Cal. 516; *Moore vs. Martin*, 38 Cal. 428.

A tax deed to land conveys no title where it affirmatively appears therefrom that the notice from the purchaser to the owner, required by section 3785 of the Political Code (as amended March 12, 1885), notified the owner that the land had been sold for a smaller amount of money than it actually was sold for.

Landregan vs. Peppin, 86 Cal. 122.

Under section 12 of the Code of Civil Procedure, providing that in the computation of time in which an act provided by law is to be done, the first day is excluded and the last day included, a tax deed showing that the notice to redeem was served on the 25th day of July and fixing August 23d, as the time when the purchaser would apply for a deed, is invalid as giving only twenty-nine days instead of thirty days required by law, and the defect is not cured by a recital in the tax deed that the thirty days' notice was given.

Landregan vs. Peppin, 86 Cal. 122; citing *Misch vs. Mayhew*, 51 Cal. 516.

A notice posted on the premises, by a purchaser at a tax sale of an application for a deed which fails to state that the property had been sold for delinquent taxes, or to give the date of the sale, or the amount for which the property was sold, as required by section 3785 of the Political Code, is fatally defective; and a deed issued to such purchaser by the tax collector under such notice is issued without authority, and is null and void.

Hughes vs. Kennedy, 92 Cal. 382; citing *Landregan vs. Peppin*, 86 Cal. 122; *Oullahan vs. Sweeney*, 79 Cal. 537; *Grimm vs. O'Connell*, 54 Cal. 524; *Anderson vs. Hancock*, 64 Cal. 456.

Section 3785 of the Political Code, as amended in March, 1885, providing that notice must be given by a purchaser of real property at a tax sale of his application for a deed, does not apply to a purchaser whose right to a deed had become absolute by expiration of the time of redemption before the taking effect of the amendment, no such notice having been required prior thereto.

Rollins vs. Wright, 93 Cal. 395; distinguishing *Oullahan vs. Sweeney*, 79 Cal. 537. See, also, *Haaren vs. High*, 97 Cal. 445.

The provision of section 3787 of the Political Code that a tax deed shall be "conclusive evidence of the regularity of all other proceedings" refers to the acts and proceedings required to be done and had at the hands of the public officials

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intrusted with the various steps leading up to the execution of the tax deed, and not to the acts required to be done by the applicant for the deed, under the statute subsequently enacted, in reference to serving notice upon the owner thirty days previous to the expiration of the time for redemption, or thirty days before he applies for a deed; and in the absence of the proof of such notice, the tax deed is no evidence of title.

Miller vs. Miller, 96 Cal. 376;

Reed vs. Lyon, 96 Cal. 501;

Main vs. Thornton, 20 Cal. App. 194.

A notice to redeem from a tax sale, preliminary to a demand for a deed, pursuant to section 3785 of the Political Code, must state the amount then due, and if the amount therein stated is in excess of the amount then actually due, the time for redemption does not expire, and the tax deed given thereunder conveys no title. The three dollars allowed for service and proof of service of notice to redeem is no part of the sum due at the date of the notice, and no part of such fee can be included in the notice of the sum due.

Reed vs. Lyon, 96 Cal. 501; citing *Miller vs. Miller*, 96 Cal. 376.

A notice of redemption stating that the time allowed by law for redemption of the property will expire on a certain specified date, not corresponding with the period of twelve months from the date of the purchase, and that unless redeemed sooner the purchaser "will hereafter apply to said tax collector for a deed," does not sufficiently state, as required by the statute, "the time when the right of redemption will expire, or when the purchaser will apply for a deed."

California and Nevada Railroad Company vs. Mecartney, 104 Cal. 616.

Where land has been sold to the state for taxes, the delinquent taxpayer, in order to effect a redemption of the land, is not required to pay the sum of three dollars for each lot redeemed, for giving notice of the intention of the state to apply for a deed under section 3785 of the Political Code, as part of the costs and expenses which have accrued by reason of the delinquency and sale.

San Francisco and Fresno Land Company vs. Banbury, 106 Cal. 129.

No officer or agent of the state is empowered by the Political Code to give the requisite notice to a delinquent taxpayer that the state will apply for a deed.

San Francisco and Fresno Land Company vs. Banbury, 106 Cal. 129. See, also, *Main vs. Thornton*, 20 Cal. App. 194.

NOTE.—See new section 3785a, Political Code, added in 1909.

Under section 3785 of the Political Code, as it stood in February, 1891, the affidavit of service of notice to redeem property from a tax sale showing that it was served by posting the notice upon the property, but not stating that the premises were vacant and unoccupied at the time of the posting of the notice, is insufficient, and does not authorize the execution of a tax deed for the property.

Hale vs. Capps, 107 Cal. 513.

The power of the tax collector to issue a tax deed comes not alone from the existence of the facts, but from the proof of their existence made in the manner specified in the statute, and the mode becomes the measure of his power, and he has no authority to issue a deed until supplied by affidavit with the proof of notice given as the statute provides.

Hale vs. Capps, 107 Cal. 513.

Under section 3785 of the Political Code, a tax deed issued without an affidavit, showing that the notice of intention to apply for a deed required thereby to be

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given, has been given, is void. Such affidavit must show on its face whether the property was occupied or unoccupied.

Simmons vs. McCarthy, 118 Cal. 622;

Simmons vs. McCarthy, 128 Cal. 455;

Preston vs. Hirsch, 5 Cal. App. 485.

A tax deed can not be sustained where it appears that the property was unoccupied, and that the notice to redeem was posted on the premises too late to bring it within the period of thirty days next previous to the expiration of the time for redemption, and that the notice was not published in every issue of a newspaper published during said period, nor during the period of thirty days next before the purchaser applied for a deed, as required by law.

Walsh vs. Burke, 134 Cal. 594;

Main vs. Thornton, 20 Cal. App. 194.

The burden of proof is upon the claimant under the tax deed to show a compliance with the statute as to the notice of redemption.

Walsh vs. Burke, 134 Cal. 594.

Where the service of the notice to redeem did not comply with the statute, and the affidavits to prove the notice were made after the day appointed for the purchaser's application for a deed, in which it was stated that the "property is entirely unoccupied," without stating that it was such when the notice was given, the failure to comply substantially with the statutory requirements renders the tax deed void, and the property is still subject to redemption.

Miller vs. Williams, 135 Cal. 183; citing *Simmons vs. McCarthy*, 118 Cal. 625.

NOTE.—Some of the points in *Miller vs. Williams* were affirmed in *Palomares Land Co. vs. Los Angeles*, 146 Cal. 530; *San Diego Realty Co. vs. Cornell*, 150 Cal. 637; *Wright vs. Fox*, 150 Cal. 680; *Fox vs. Townsend*, 152 Cal. 51; *Chapman vs. Zoberlein*, 152 Cal. 216; and distinguished in *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560, and *Fox vs. Townsend*, 152 Cal. 51.

Where the law in force at the time of a tax sale required the purchaser or his assignee, within thirty days prior to the expiration of the time for redemption, or before a deed was applied for, to serve written notice upon the owner or occupant of such expiration or application, and to file an affidavit with the tax collector showing such service, before a deed could be issued, and where the law was changed prior to the tax deed dispensing with such notice, a deed made by the tax collector to the state without such notice and affidavit passed no title thereto, and a subsequent deed by the state to a third party is void and can not support an action to quiet title against the owner of the property.

Johnson vs. Taylor, 150 Cal. 201; distinguishing *O'ullahan vs. Sweeney*, 79 Cal. 537. See, also, *Preston vs. Hirsch*, 5 Cal. App. 485; *Main vs. Thornton*, 20 Cal. App. 194; *Holland vs. Hotchkiss*, 162 Cal. 366.

The requirement of law for the giving of thirty days' notice of application for tax deed applies to the state as well as to a private purchaser.

Johnson vs. Taylor, 150 Cal. 201; affirming *San Francisco, etc., Land Co. vs. Banbury*, 106 Cal. 130. See, also, *Preston vs. Hirsch*, 5 Cal. App. 485; *Main vs. Thornton*, 20 Cal. App. 194; *Johnson vs. Carty*, 162 Cal. 391.

A tax deed to the state as purchaser of land sold to it for delinquent taxes, and the subsequent deed from the state based thereon, made at a time when the statute (Political Code, section 3785) required as a condition precedent to the execution of the deed that the purchaser must give to the owner of the property thirty days'

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notice in writing of his intended application for the deed, are rendered inoperative and void by reason of the failure to give such notice.

Holland vs. Hotchkiss, 162 Cal. 366; citing *Johnson vs. Taylor*, 150 Cal. 201; *King vs. Samuel*, 7 Cal. App. 63; *Wetherbee vs. Johnston*, 10 Cal. App. 264.

The validity of a tax title must depend upon and be governed by the law in force at the time of the sale; and where the sale was made under the act of March 19, 1891, requiring the purchaser thirty days prior to the expiration of the time for redemption, or prior to a application for a deed to serve the owner with a written notice, to be recorded and proved by affidavit; in the case of the want of such notice and proof, the deed was void and passed no title.

King vs. Samuel, 7 Cal. App. 55; citing *Reed vs. Lyon*, 96 Cal. 501; *Teralta L. and W. Co. vs. Shaffer*, 116 Cal. 518; *Walsh vs. Burke*, 134 Cal. 594; *Collier vs. Shaffer*, 137 Cal. 319; *Miller vs. Miller*, 96 Cal. 376; *Hughes vs. Kennedy*, 92 Cal. 382; *Johnson vs. Taylor*, 150 Cal. 201.

The requirement of notice to redeem on application for a tax deed under the act of March 19, 1891, applies to the state as well as to a private purchaser, and the state can acquire no title or pass one, unless such notice is given.

King vs. Samuel, 7 Cal. App. 55; citing *Johnson vs. Taylor*, 150 Cal. 201; *Guptill vs. Kelsey*, 6 Cal. App. 35; *Teralta L. and W. Co. vs. Shaffer*, 116 Cal. 518. See, also, *Johnson vs. Carty*, 162 Cal. 391.

While section 3785 of the Political Code required thirty days' notice to the owner to redeem before the execution of a deed, it applied to a sale for taxes made to the state, and such notice of redemption was required before a deed could be executed to the state; and if no such notice was given, the deed to the state was void, and passed no title to the state or to any one claiming under it.

Wetherbee vs. Johnston, 10 Cal. App. 264; citing *Johnson vs. Taylor*, 150 Cal. 201; *San Francisco, etc., Land Co. vs. Banbury*, 106 Cal. 130.

The provision of section 3787 of the Political Code, making the deed conclusive evidence of the regularity of certain proceedings, does not apply to or affect the requirement of notice to the owner to redeem.

Wetherbee vs. Johnston, 10 Cal. App. 264; citing *Miller vs. Miller*, 96 Cal. 379; *Reed vs. Lyon*, 96 Cal. 501; *Walsh vs. Burke*, 134 Cal. 394.

LVII. Tax Deed.

To sustain a title by virtue of a tax deed, every prerequisite to the exercise of the power of sale by the officer must be shown to have been accomplished. One of the prerequisites to the validity of a tax sale is the authority under which the taxes are assessed.

Norris vs. Russell, 5 Cal. 249;
Ferris vs. Coover, 10 Cal. 589.

If the property is not listed and assessed for the purpose of taxation, the tax deed conveys no title.

People vs. Hastings, 29 Cal. 449; citing *Ferris vs. Coover*, 10 Cal. 632. See, also, *Braly vs. Seaman*, 30 Cal. 610; *People vs. San Francisco Sav. Union*, 31 Cal. 132.

A tax deed properly acknowledged is admissible in evidence with proof of execution, etc. Courts take judicial notice of who holds the office of tax collector and other offices, and of the genuineness of the signatures.

Wetherbee vs. Dunn, 32 Cal. 106.

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A deed given before the time for redemption has expired, is void.

Moore vs. Martin, 38 Cal. 428; citing *Gross vs. Fowler*, 21 Cal. 392; *Bernal vs. Gleim*, 33 Cal. 668.

A deed executed before the time for redemption expires, is void.

Hall vs. Yoell, 45 Cal. 584; citing *Gross vs. Fowler*, 21 Cal. 392; *Bernal vs. Gleim*, 33 Cal. 668.

As a general rule, a sale and conveyance in due form for taxes extinguishes all prior liens, whether for taxes or otherwise.

Dougherty vs. Henarie, 47 Cal. 9.

A deed of land executed by an officer under a sale made on a judgment enforcing a lien for a tax, can not be held to have an effect which the statute under which the judgment was rendered says it shall not have. Such deed is not, therefore, conclusive evidence of title against one who paid the tax and was not a party to the judgment.

Mayo vs. Haynie, 50 Cal. 70.

A deed by which the grantor bargains, sells, and conveys, carries with it an after-acquired title of the grantor.

Dalton vs. Hamilton, 50 Cal. 422.

A tax deed which is void on its face does not throw a cloud upon the title, and a threat by the tax collector to sell property and execute such a deed, does not amount to duress.

Wills vs. Austin, 53 Cal. 152; citing *Bucknall vs. Story*, 46 Cal. 589.

If land be sold for taxes, a part of which are valid and a part illegal, the whole sale and the tax deed will be void.

Wills vs. Austin, 53 Cal. 152.

If a tax deed recites a void assessment, it is void, and it can not be shown that there was in fact a valid assessment. The plaintiff must recover, if at all, on his tax deed, supported by evidence of the regularity of the prior proceedings, if the same are attacked. He can not recover on the tax roll or delinquent list.

Grimm vs. O'Connell, 54 Cal. 522.

Where the statute prescribes the particular form of a tax deed, the *form* becomes *substance*, and must be strictly pursued, or the deed will be void.

Grimm vs. O'Connell, 54 Cal. 522;

Hubbell vs. Campbell, 56 Cal. 527.

Where the statute prescribes the particular form of tax deed, the *form* becomes *substance*, and must be strictly pursued, and the courts can not inquire whether the required recitals are of material facts or otherwise.

Hinds vs. Clark, 173 Cal. 49; citing *Henderson vs. DeTurk*, 164 Cal. 296; *Baird vs. Monroe*, 150 Cal. 560; *Preston vs. Hirsch*, 5 Cal. App. 485; *Simmons vs. McCarthy*, 118 Cal. 622; *Jordan vs. Beale*, 172 Cal. 226; *Stanton vs. Hotchkiss*, 157 Cal. 652.

If the officer fails to make a deed which complies with the law, it would seem that he can be compelled by *mandamus* to make a proper deed.

Grimm vs. O'Connell, 54 Cal. 52.; citing *Hewell vs. Lane*, 53 Cal. 213.

A void tax deed can not be made valid by proof of a valid assessment.

Hearst vs. Egglestone, 55 Cal. 365; citing *Grotfend vs. Ultz*, 53 Cal. 666; *Grimm vs. O'Connell*, 54 Cal. 522.

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Mandamus will not lie to compel a sheriff to issue a certificate and deed to a purchaser at a sale for taxes under an invalid assessment.

Bosworth vs. Webster, 64 Cal. 1.

A description in a tax deed as a "mortgage upon certain property" is sufficient to convey the land itself.

Doland vs. Mooney, 72 Cal. 34.

Under section 4 of article XIII of the constitution, declaring that a mortgage, for the purposes of assessment and taxation, shall be deemed and treated as an interest in the property affected thereby, a tax deed, which, described the property assessed and conveyed as a mortgage interest in a specifically described tract of land, is sufficient to convey the land itself.

Fox vs. Townsend, 152 Cal. 51; affirming *Doland vs. Mooney*, 72 Cal. 34.

A tax deed which is void upon its face does not affect the title, and its registration gives no notice to any person.

Oglesby vs. Hollister, 76 Cal. 136; citing *Mesick vs. Sunderland*, 6 Cal. 315.

A tax deed to school land sold for delinquent taxes assessed to the holder of a certificate of purchase therefor passes only the equitable title of the applicant.

Dorn vs. Baker, 96 Cal. 206.

A person claiming under a tax title has the burden of proof to establish its validity.

Gates vs. Lindley, 104 Cal. 451.

NOTE.—Under the revenue laws as amended in 1895, and the decisions thereunder, the burden of proof as to the invalidity of the tax deed, it would seem, has been shifted to those who attack its legality.

The fact that the certificate of purchase given at a tax sale, specified the time when the purchaser would be entitled to a deed, as being a date just twelve months from the date of sale, and that such date so specified was a legal holiday, is not a fatal defect in the certificate, though no deed could be compelled upon that day, the statutes having reference to the time when the right of the purchaser to the deed shall have become fixed, and not to the means of obtaining the instrument from the proper officer.

Rollins vs. Woodman, 117 Cal. 516.

A tax deed which is void upon its face can not cast a cloud upon the title of the owner of the land, and a court of equity will no enjoin the issuance of such void deed.

Russ and Sons Company vs. Crichton, 117 Cal. 695.

Where the statute prescribes the particular form of the tax deed, the form becomes substance, and must be strictly pursued or the deed will be void, and the courts can not inquire whether the required recitals are of material facts or otherwise. Such a deed, when relied upon as evidence of title, can not be aided by reference to the certificate of sale, or by showing that the certificate complied with the statute. It is not even *prima facie* evidence that the title of the owner assessed is impaired, and can not form the basis of a recovery.

Simmons vs. McCarthy, 118 Cal. 622;

Simmons vs. McCarthy, 128 Cal. 455;

Preston vs. Hirsch, 5 Cal. App. 485;

Jordan vs. Beale, 172 Cal. 226.

It may be regarded as settled that the legislature may make a tax deed conclusive evidence of a compliance with all provisions of the statute which are merely

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directory of the mode in which the power of taxation may be exercised, but that it can not make it conclusive evidence of those matters which are essential to the exercise of the power; that as to those steps which are jurisdictional in their nature, and without which the power of taxation can not be called into exercise—such as the listing or assessment of the property, a levy of the tax, some notice of its delinquency, and that the property will be sold therefor—the legislature can not deprive the owner to show want of compliance. As to the essential or jurisdictional facts which the legislature can not annul or change, it can not excuse the nonperformance of them, and of course, can not make the doing of any other thing a substitute for them or conclusive evidence of their being done.

Ramish vs. Hartwell, 126 Cal. 443; citing *Rollins vs. Wright*, 93 Cal. 395; *Haaren vs. High*, 97 Cal. 445.

While the legislature can make a certificate of sale or tax deed conclusive as to matters which are in their nature nonessentials, it has not the power to make such documents conclusive as to any of the essentials of listing, valuation, apportionment or notice.

Bruschi vs. Cooper, 30 Cal. App. 682.

The object of requiring a description of the property in the delinquent list is to notify the owner of the land that the taxes thereon are delinquent, and that the lot is to be sold, and if the description is sufficient to give this notice it must be held to be a sufficient compliance with the statute. The rule that at one time prevailed, requiring a claimant under a tax deed to make strict and exact proof of every step to be taken in the proceeding under which the property was sold, has been greatly relaxed by modern legislation, and the speculative nature of purchases at tax sales has been thereby removed. Such legislation in this state is shown by the provisions of the Political Code making the deed *prima facie* evidence of all acts necessary for acquiring jurisdiction to make the sale, and conclusive as to all proceedings taken in the exercise of the jurisdiction thus acquired, and also by the provision in section 3885 of the Political Code that no "informality" in any act relating to the assessment or collection of taxes shall render the tax illegal. The duty of the owner of the land to pay the taxes thereon and the right of the state to enforce their collection are not changed, but the inducement that under the former system was held out to the owner not to pay the taxes, in the hope that some trifling and immaterial defect in the proceedings might be shown to defeat the effect of the sale, has been taken away. The legislature doubtless considered that, in case of his failure to pay the taxes when due, his rights, as well as the rights of a purchaser at a tax sale, will be better conserved by throwing upon him the burden of establishing the invalidity of the sale, and at the same time declaring that mere irregularities in the proceedings shall not defeat the rights of the purchaser.

Davis vs. Pacific Imp. Co., 137 Cal. 245;

Davis vs. Pacific Imp. Co. 7 Cal. App. 452.

In an action by the owner of the land to quiet his title as against a defendant who asserts liens for taxes under certificates of sale, where it appears that the defendant has failed for a period of from twelve to fourteen years to assert his liens and obtain tax deeds, the court was justified in quieting plaintiff's title, without requiring the taxes to be paid, and in leaving the defendant to his legal rights.

Crocker vs. Dougherty, 139 Cal. 521.

The legislature may make the tax deed conclusive evidence of compliance with every requirement which the legislature might originally, in the exercise of its

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discretion, have dispensed with. Such action may be by remedial legislation or healing acts subsequently enacted.

Chase vs. Trout, 146 Cal. 350;
Bruschi vs. Cooper, 30 Cal. App. 682.

In tax sales to the state, it is to be noted that the liberal period of redemption is full five years as an absolute right. At the end of this five years the deed to the state is made, and the title of the state becomes absolute. We are unable to discover any constitutional objection which interposes and invalidates the state's title. We are unable to see why the state may not obtain a title free from all equities in the former owner at the expiration of five years as may a private citizen, after foreclosure upon the mortgage when the period of redemption following such foreclosure has passed.

Fox vs. Wright, 152 Cal. 59;
Schamblin vs. Means, 6 Cal. App. 261;
Phillips vs. Cox, 7 Cal. App. 308.

Where land was sold for delinquent taxes long prior to the amendment of February 13, 1885, to section 3788 of the Political Code, requiring applications for deed to be made within one year and three months from time such act took effect, and the purchaser failed to apply for a deed within the time limited, he is not entitled to a writ of mandate to compel the tax collector to execute the deed. The legislature has power to reduce the period of limitation from that prescribed by law at the time when the obligation matured, provided the remedy is not impaired, nor the period of limitation so much reduced as not to afford a reasonable time within which to apply for the remedy.

Tuttle vs. Block, 104 Cal. 443; citing *Kerckhoff, etc., Lumber Company vs. Olmstead*, 85 Cal. 80; distinguishing *Ribinson vs. Magee*, 9 Cal. 81; *Rollins vs. Wright*, 93 Cal. 395.

The provision of section 3788 of the Political Code, as amended in 1885, that "in all cases where land has been heretofore sold for delinquent taxes, the deed therefor must be made within one year and three months after this act takes effect, and, unless so made, the purchaser shall be deemed to have relinquished all his rights under such sale," does not apply to the state.

Russ and Sons Company vs. Crichton, 117 Cal. 695.

Certain correction deeds were made by the tax collector to the state, and it is urged that these deeds were without authority and void. The general principles governing such correction deeds are well settled. When a tax deed does not conform in its recitals to the facts, the officer is authorized to execute a second and corrected deed (section 3805b of the Political Code). But he has no power to execute a second deed which shall mistake the facts respecting any proceedings prior to its execution. Such a deed would be void. The power and the duty of the proper officer is not exhausted by the execution of an irregular or imperfect tax deed. Nor is there any force in the objection that the correction deeds to the state were made after the state had parted with the title. There is no reason why the state, like a private individual, may not obtain a proper correction deed for the betterment of the title to property which it has conveyed, and, if this is done after conveyance, why, as in the case of an individual, it should not serve to perfect the title granted.

Fox vs. Townsend, 152 Cal. 51;
Schamblin vs. Means, 6 Cal. App. 261;
Phillips vs. Cox, 7 Cal. App. 308.

When a tax collector has issued a tax deed for land sold by the state, which is defective in not conforming in its recitals to the facts, he has power, without

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special statutory authorization, to execute a second and corrected deed reciting the facts, but he has no power to execute a second deed which shall mistake the facts respecting any proceedings prior to its execution. Such a deed would be void.

Webster vs. Somer, 159 Cal. 459; citing *Grimm vs. O'Connell*, 54 Cal. 523; *Fox vs. Townsend*, 152 Cal. 51.

The legislature had the power to make the deed to the state conclusive evidence of the regularity of all proceedings, which it might have dispensed with in the first instance.

Phillips vs. Cox, 7 Cal. App. 308; citing *Chase vs. Trout*, 146 Cal. 350; *County Bank vs. Jack*, 148 Cal. 442.

There is no constitutional objection to the power of the legislature to make the tax collector the agent of the state to sell its title to tax-deeded lands, and it is not required that the governor shall sign such deed.

Phillips vs. Cox, 7 Cal. App. 308; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 289.

A deed may refer to another document, sufficiently identified, with the same effect as if the document referred to was set forth in full in the deed.

Jacobs vs. All Prsons, etc., 12 Cal. App. 163; citing *Burnett vs. Piercy*, 149 Cal. 179; *Estate of Willey*, 128 Cal. 1.

NOTE.—The above was an action under the "McEnerney Act," and referred to an ordinary deed as between man and man. The rule as to a *conveyance for taxes* is, perhaps, different.

A tax deed is not conclusive proof of the regularity of all proceedings leading up to the sale.

Henderson vs. Ward, 21 Cal. App. 520.

If the deed from the tax collector upon its face showed a noncompliance with section 3897 of the Political Code regarding mailing of notice of sale to the property owner, the deed is void.

Henderson vs. Ward, 21 Cal. App. 520; citing *Smith vs. Furlong*, 160 Cal. 522; *Healton vs. Morrison*, 162 Cal. 670.

Possession of a deed is *prima facie* evidence of its delivery, and a grant duly executed is presumed to have been delivered at its date.

Thompson vs. McKenna, 22 Cal. App. 129.

It was within the power of the legislature to provide for the present system of taxation, under which the state acquires title to property of one who permits the taxes thereon to become delinquent, and to authorize a subsequent sale thereof. While a delinquent owner can not be deprived of his property under such proceeding without due process of law, that requirement means only that due notice of sale shall be given him, and this is fully accorded him by sections 3764-3767 of the Political Code, which provide for a notice to him by publication of the sale to the state. This is all the notice he is constitutionally entitled to in that respect.

Merchants' Trust Company vs. Wright, 161 Cal. 149; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234.

In the absence of any statutory definition, an encumbrance, within the meaning of a covenant against incumbrances implied, under section 1113 of the Civil Code, from the use of the word "grant" in a conveyance of land, is any right to or interest in the land which may subsist in third persons to the diminution of the value of the estate to the tenant, but consistently with the passing of the fee.

Fraser vs. Bentel, 161 Cal. 390.

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While the use of the word "grant" in a conveyance implies a covenant against incumbrances made or suffered by the grantor, and while taxes which were at the date of the grant a lien upon the property conveyed are embraced therein, nevertheless the covenant implied from the use of the term "grant" must be deemed limited by the subject matter of the conveyance.

National Bank of Bakersfield vs. Williams, 31 Cal. App. 705.

Though the meaning of the word "grant" has by judicial interpretation been narrowed or enlarged to meet the exigencies of specific cases and the spirit of the law in which that word has been employed; yet the word "grant," as so used in the constitution, is to be taken in its ordinary and generally accepted sense, especially where it is used in connection with the word "sale," in which case both terms convey the idea of parting with the fee for a monetary consideration, and do not embrace the concept of a "lease."

San Pedro, Los Angeles and Salt Lake Railroad Company vs. Hamilton, 161 Cal. 610.

Tax proceedings are still *in invitum*, in this state, and to be valid must be in strict accord with statutory requirements.

Seccombe vs. Louis Phillips Estate, 162 Cal. 161; citing *Miller vs. Williams*, 135 Cal. 184; *Fox vs. Townsend*, 152 Cal. 51; distinguishing *Davis vs. Pacific Improvement Company*, 137 Cal. 250; *Best vs. Wohlford*, 144 Cal. 734; *Fox vs. Wright*, 152 Cal. 60; *Bank of Lemoore vs. Fulgham*, 151 Cal. 236.

Deeds are to be construed like any other contract and the intent of the grantor arrived at, if possible, from the terms set forth in the instrument.

Sheriff vs. Sheriff, 32 Cal. App. 681; citing *Firth vs. Los Angeles Pacific Land Co.*, 28 Cal. App. 399.

Real property acquired by the state under a sale to it for delinquent taxes can not be subsequently sold by it under an order of the state controller, if the legal title thereto, excepting such title as the state acquired by the tax collector's deed, has in the interim become vested in a municipal corporation under condemnation proceedings for a public purpose.

Smith vs. City of Santa Monica, 162 Cal. 221.

Where a municipal corporation acquires property under condemnation proceedings, the title which the state takes by a tax collector's deed is merged into the larger title which the municipality holds under the trusts both for the public as distinguished from the state, and also for the state as the supreme sovereign.

Smith vs. City of Santa Monica, 162 Cal. 221; distinguishing *City of Santa Monica vs. Los Angeles County*, 15 Cal. App. 710.

A tax deed to the state as purchaser of land sold to it for delinquent taxes, and the subsequent deed from the state base thereon, made at a time when the statute (Political Code, section 3785) required as a condition precedent to the execution of the deed that the purchaser must give to the owner of the property thirty days' notice in writing of his intended application for the deed, are rendered inoperative and void by reason of the failure to give such notice.

Holland vs. Hotchkiss, 162 Cal. 366; citing *Johnson vs. Taylor*, 150 Cal. 201; *King vs. Samuel*, 7 Cal. App. 63; *Wetherbee vs. Johnston*, 10 Cal. App. 264.

The making of the deed from the state to the purchaser is not conclusive evidence of the regularity of antecedent steps. In this respect the code makes a distinction between deeds *to* the state (Pol. Code, sec. 3787), and deeds *from* the state (Pol.

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Code, sec. 3898). The latter kind of deed is only *prima facie* evidence of the facts recited therein.

Krotzer vs. Douglas, 163 Cal. 49; citing *Smith vs. Furlong*, 160 Cal. 522.

Where land is mortgaged to the regents of the University of California, and a tax sale and conveyance of the mortgagor's interest is made to the state and a resale and deed thereupon is made by the state to an individual, under section 3897 of the Political Code, all at times when the constitutional provision was in force declaring that for purposes of taxation the interest of the mortgagor and that of the mortgagee in the land mortgaged should be distinct interest and separately taxable, such sales and deeds did not operate upon the mortgage interest or lien of the mortgagee or vest title in the tax sale purchaser free from the mortgage lien.

Webster vs. Board of Regents of the University of California, 163 Cal. 705.

The mortgage interest belonging to the regents of the University of California being thus free from taxation, it follows that the lien of the tax assessments, made upon the interest of the mortgagor alone, did not extend to or include the interest vested in the state by virtue of the mortgage to the regents, and the tax sales and deeds, made in pursuance of such assessments, were confined to the interest of the mortgagor, and did not operate to transfer or convey the exempt interest of the state represented by the mortgage.

Webster vs. Board of Regents of the University of California, 163 Cal. 705.

An action will lie in this state for the reformation of a deed without a demand previously made.

Danielson vs. Neal, 164 Cal. 748.

The inclusion in a deed of the words "more or less" in the description of the quantity of land conveyed, does not preclude a reformation of the deed for mistake in not embracing all the acreage agreed upon.

Danielson vs. Neal, 164 Cal. 748.

NOTE.—Very doubtful if the foregoing would be applicable in tax conveyances.

A deed under street improvement act which includes slightly more land than was assessed, is void, and it is immaterial whether the buildings of the owner were upon any portion of the property described in the assessment, or whether he was injured by the sale of the excess. Therefore the purchaser can not have a decree quieting title according to the description contained in the assessment.

Los Angeles Olive Growers Association vs. Pozzi, 167 Cal. 454.

Words used in a conveyance are to be given their ordinary and popular meaning, unless they are used in a special or technical sense, or the context shows that they are used in a different sense.

Wood vs. Mandrilla, 167 Cal. 607.

The word "half," when used without qualification in a deed, must be given its literal significance as one of two equal parts of the property described. A deed to the "east half" of a fractional quarter section of land, which makes no mention of acreage, conveys the east half in quantity, where the division of the quarter section, under the rule as to government surveys, divides the quarter into halves of equal quantity or acreage.

Wood vs. Mandrilla, 167 Cal. 607.

The rule as to the practical construction of a deed applies only when the language on the face of the instrument is doubtful, uncertain, or ambiguous.

Wood vs. Mandrilla, 167 Cal. 607.

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In construing a deed every provision, clause, and word shall be taken in consideration in ascertaining the meaning of the grantor, whether words of grant, of description, or words of qualification, restraint, exception or explanation, and every word shall be presumed to have such force and effect as it can have.

East San Matco Land Company vs. Southern Pacific Railroad Company, 30 Cal. App. 223.

Deeds are to be construed like any other contracts, and the intent of the parties arrived at by a consideration of the whole instrument and not of detached clauses.

Whitcomb vs. Worthing, 30 Cal. App. 629.

In proving a chain of title based upon a tax deed, the deed *to* the state as well as the deed *from* the state must be offered in evidence.

McArthur vs. Goodwin, 173 Cal. 499.

The fact that the property sold to the state for non-payment of taxes was incorrectly assessed to one who was not the owner thereof does not invalidate such conveyance to the state. Section 3628 of the Political Code provides "that no mistake in the name of the owner, or supposed owner, of real property shall render the assessment thereof invalid."

Hanson vs. Goldsmith, 170 Cal. 512; citing *Klumpke vs. Baker*, 131 Cal. 80; *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530; *Webster vs. Somer*, 159 Cal. 459.

Whether or not a deed has been delivered, either to a grantee or to a depositary, is a question of fact.

Bias vs. Reed, 169 Cal. 33.

Clear words of description are not modified by a recital of quantity in the deed.

Cecil vs. Gray, 170 Cal. 137.

Neither a failure of consideration nor a breach of covenant which does not amount to a condition is sufficient to avoid an executed conveyance of property rights.

Duckworth vs. Watsonville Water and Light Company, 170 Cal. 425.

"Delivery" is a word of well-defined meaning in the law. It is the act, however evidenced, by which the instrument takes effect and title thereby passes. "Execution" is a word of well-defined legal meaning, and includes effective delivery.

Williams vs. Kidd, 170 Cal. 631.

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A sheriff's deed upon a judicial sale, executed before the expiration of the statutory period of redemption, is absolutely void and not merely voidable.

Gross vs. Fowler, 21 Cal. 392.

A deed which recites generally that the property was duly assessed, and taxes duly levied, is *prima facie* evidence of title. It is not necessary that such deed recite each act of the officers making the assessment and levy: a general recitation is all that is necessary.

O'Grady vs. Barnhisel, 23 Cal. 287;

Moss vs. Shear, 25 Cal. 38;

Brunn vs. Murphy, 29 Cal. 326;

Wetherbee vs. Dunn, 32 Cal. 106.

The recitals in a tax deed are declared by statute to be *prima facie* evidence of the proceedings recited, but it has never been supposed that a party who sets

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forth a tax title was thereby excused from alleging that those proceedings were had. The reverse has been decided by this court.

Himmelman vs. Danos, 35 Cal. 441; citing *Russell vs. Mann*, 22 Cal. 133.

A sheriff's deed need not recite the judgment and execution under which he acted. It is sufficient if it appear in the deed that the sale was made under the authority of a judgment and execution; that is, if the deed recites sufficient to show the authority of the sheriff to sell.

Clark vs. Sawyer, 48 Cal. 133; citing *Blood vs. Light*, 38 Cal. 649.

The statute requiring recitals in a sheriff's deed was not intended to make the deeds void which did not contain them, but was only intended to make the recitals evidence of the facts recited.

Clark vs. Sawyer, 48 Cal. 133; citing *Blood vs. Light*, 38 Cal. 649.

In the absence of a statute declaring that the recitals in a tax deed shall convey the title to the land therein described, and shall be *prima facie* evidence of title, the burden is cast upon the party claiming under the deed of proving that the recitals are true.

Pierce vs. Low, 51 Cal. 580.

NOTE.—But see *Davis vs. Pacific Improvement Co.*, 137 Cal. 245.

It is the general rule that a grantee under a tax deed, valid on its face, is not affected in any of his rights by recitals in the sheriff's return of the sale contradicting the recitals in the deed.

Hewell vs. Lane, 53 Cal. 213.

Mandamus will not lie to compel a sheriff to deliver a deed to a purchaser at a tax sale, containing recitals which are contradicted by the return of the tax sale.

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Mandamus will not lie to compel a sheriff to deliver a deed to a purchaser at a tax sale, containing recitals which are contradicted by the return of the tax sale.

Hewell vs. Lane, 53 Cal. 213;

Grimm vs. O'Connell, 54 Cal. 522.

It may be regarded as settled in this state that the misrecital of the execution in an officer's deed will not affect the validity of the deed, if the officer had authority to sell.

Wilson vs. Madison, 55 Cal. 5; reciting *Blood vs. Light*, 38 Cal. 659; *Hunt vs. Loucks*, 38 Cal. 382; *Ritter vs. Scannell*, 11 Cal. 238.

The recital in a tax deed as to whom the property was assessed is conclusive.

Brady vs. Dowden, 59 Cal. 51.

The omission from a tax deed of a recital in the certificate of sale as to the time at which the purchaser would be entitled to a deed is fatal to its validity.

Anderson vs. Hancock, 64 Cal. 455; citing *Grimm vs. O'Connell*, 54 Cal. 522; *Hubbell vs. Campbell*, 56 Cal. 527.

NOTE.—See "validating act" of February 28, 1903; Stats. 1903, p. 63.

Recitals in a tax deed contrary to those in the return of sale can not be regarded, and invalidate the deed.

Reynolds vs. Lincoln, 71 Cal. 183.

A recital in the certificate of tax sale and tax deed of the nonpayment of the costs of publication will not vitiate the tax sale or tax deed, if it does not appear

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that the amount for which the property was actually sold included anything for costs of publication.

Doland vs. Mooney, 79 Cal. 137. See, also, *Doland vs. Mooney*, 72 Cal. 34.

When a certificate of tax sale and tax deed conforms substantially to the requirements of the Political Code, it is error to refuse to admit the deed in evidence in an action to quiet title founded thereupon.

Doland vs. Mooney, 79 Cal. 137. See, also, *Doland vs. Mooney*, 72 Cal. 34.

Under the provisions of the code which require the deed to contain the recitals contained in the certificate of sale, it is sufficient that the deed recites the fact that the time when the purchaser will be entitled to a deed was contained in the certificate of sale without an independent recital thereof as a fact.

Hewes vs. McLellan, 80 Cal. 393.

The tax certificate and deed are not required to recite the name of the owner of the property, but only that of the person assessed; and it must be presumed, in the absence of proof to the contrary, that the person assessed was known to the assessor to be the owner.

Hewes vs. McLellan, 80 Cal. 393.

A tax deed which omits to recite the matters recited in the certificate of sale, including a statement of the time when the purchaser will be entitled to a deed, is void. A recital in a deed that the certificate of sale contained the matters required by law, is not a substantial recital of the matters required to be contained in the certificate of sale.

Hughes vs. Cannedy, 92 Cal. 382.

NOTE.—See "validating act," Stats. 1903, p. 63.

Section 3786 of the Political Code, making the recital of the matters required to be recited in tax deeds *prima facie* evidence of their truth, and section 3787 of the same code, providing that as to all other matters the deed is conclusive, are valid and effective, and do not deprive the property owners of any substantial rights because limiting their defense to the proof of such matters as to show that they do not justly owe the tax, and not allowing them to assail the regularity of proceedings not affecting their substantial rights.

Rollins vs. Wright, 93 Cal. 395.

A tax deed which recites that the property was assessed "in the year 188-, for the year 1888 and 1889," is void for failure to state the year of the assessment.

Simmons vs. McCarthy, 118 Cal. 622;

Simmons vs. McCarthy, 128 Cal. 455;

Preston vs. Hirsch, 5 Cal. App. 485.

The matters now necessary to be recited in a tax deed are those prescribed by sections 3776, 3785 and 3786 of the Political Code, and none other; and it is nowhere required under the present law that the mode of offering the land for sale shall be stated in the deed, as was formerly required, so as to show affirmatively that the officer sold the smallest quantity which any purchaser would take and pay the taxes; and where the deed contains the recitals made imperative by the Political Code, and shows that the purchaser paid the full amount of the unpaid delinquent tax, together with the costs and charges, for the property sold, and recites "that said sale was conducted in the manner prescribed by law," there being nothing in the deed to show that the land sold was not the least quantity which any person would take and pay the taxes, such fact is presumed, and the

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deed is, by the express declaration of section 3786 of the Political Code, *prima facie* evidence that "the property was sold as prescribed by law."

Hayes vs. Ducasse, 119 Cal. 682; citing *Rollins vs. Wright*, 93 Cal. 395; *Miller vs. Miller*, 96 Cal. 376; *O'Grady vs. Barnhisel*, 23 Cal. 287; *Brunn vs. Murphy*, 29 Cal. 326; *Wetherbee vs. Dunn*, 32 Cal. 106.

A recital of the publication of the notice of sale is not among those expressly required by law to appear in the deed, and when the deed contains nothing to show that the notice was not published, the due publication thereof is included in the presumption from the presence of the essential recitals of the deed that at the proper time and place the property was sold as required by law.

Hayes vs. Ducasse, 119 Cal. 682.

If the tax deed is not printed in the record upon appeal, it must be presumed in favor of the judgment that the deed correctly recited the certificate of sale.

Escondido High School District vs. Escondido Seminary, etc., 130 Cal. 128; citing *Rollins vs. Wright*, 93 Cal. 395; *Cooper vs. Miller*, 113 Cal. 238.

An exception in a grant is said to withdraw from its operation some part or parcel of the thing granted, which, but for the exception, would have passed to the grantee under the general description. The effect in such cases in respect to the thing excepted is as though it had never been included in the deed.

Lummer vs. Unruh, 25 Cal. App. 97.

The failure of a deed to name the meridian from which the townships and ranges were numbered, described as being located in Santa Cruz County, does not invalidate the deed. The court will take judicial notice that the meridian of Mount Diablo is the only meridian in that county.

Harrington vs. Goldsmith, 136 Cal. 168; citing *Faekler vs. Wright*, 86 Cal. 210; *Rogers vs. Cady*, 104 Cal. 288.

The statute does not require the tax deed to recite any changes in the assessment made by the state board of equalization; and the recital therein of the original assessment is a sufficient compliance with the statute.

Davis vs. Pacific Improvement Co., 137 Cal. 245;

Davis vs. Pacific Improvement Co., 7 Cal. App. 452.

The irrigation law (Stats. 1887, p. 40) required the certificate to specify, among other things, the time when the purchaser will be entitled to a deed, and also that the matters stated in the certificate must be recited in the deed. The recital in the deed in this connection was: "And, whereas, said certificate stated that unless the said real estate was redeemed within twelve months from the date of such sale, the purchaser thereof would be entitled to a deed thereof. That said certificate of sale bears date the 18th day of February, 1895, the day of said sale." This was a sufficient compliance with the statute in that behalf.

Best vs. Wohlford, 153 Cal. 17. See, also, *Best vs. Wohlford*, 144 Cal. 733.

If the tax deeds are valid, they constituted primary evidence, under section 3786 of the Political Code, of the regularity of the assessment upon which they were founded, equalization as required by law, non-payment of tax, non-redemption from such sales and that the person who executed the deed was the proper officer. Under section 3787 of the same code the tax deeds are conclusive evidence of the regularity of all other proceedings, and conveyed to the state the absolute title to the property described therein.

Stanton vs. Hotchkiss, 157 Cal. 652.

The certificate of sale as to one parcel of land, as recited in the deed, stated the day of sale, June 24, 1898, and that unless the property was redeemed within

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five years from the date of the date of sale the purchaser would be entitled to a deed thereof on the 24th day of June, 1903. It is conceded that the date when the purchaser would be entitled to a deed was incorrectly stated by one day in the certificate. So assuming, the error was cured by the curative act thereafter enacted. (Stats. 1903, p. 63; *Bank of Lemoore vs. Fulgham*, 151 Cal. 234; *Baird vs. Monroe*, 150 Cal. 560). The recital in the deed made June 25, 1903, which was subsequent to the enactment of the curative act, was correct. June 24, 1903, was certainly the last day on which redemption could be effected within five years from the date of sale.

Stanton vs. Hotchkiss, 157 Cal. 652.

Under section 3785 of the Political Code requiring a tax deed to the state to recite "the time when the right of redemption had expired," a deed is not invalid by reason of reciting that the time of redemption on a specified date which was one day after the last day of the redemption period.

Deets vs. Hall, 163 Cal. 249; distinguishing *Baird vs. Monroe*, 150 Cal. 560; *Stanton vs. Hotchkiss*, 157 Cal. 652. See, also, *Knight vs. Hall* and *Hall vs. Tucker*, 28 Cal. App. 435.

The case of *Baird vs. Monroe*, 150 Cal. 560, did not decide any question as to whether a date given in the deed there as to the time when the right of redemption had expired was correctly stated or not. In that case the deed contained no recital of any date at all and whether it was void on that ground the court was not called upon to decide as it sustained the validity of the deed under the curative act of 1903.

Deets vs. Hall, 163 Cal. 249.

In a certificate of sale and tax deed made to the state thereunder the naming of either the last day of the period or the first day of the time succeeding it, as a recital of "the time when the right of redemption had expired," will be good, under the peculiar wording of the statute.

Deets vs. Hall, 163 Cal. 249; concurring opinion of Justices Shaw, Angellotti and Sloss.

Where the deed to the state recited that a levy had been made for the city taxes, such recital under the provisions of section 3786 of the Political Code, is *prima facie* evidence of its truth.

Griggs vs. Hartzoke, 13 Cal. App. 429; citing *Rollins vs. Wright*, 93 Cal. 395.

Section 3786 of the Political Code requires that the tax deed recite the matter recited in the certificate of sale, and by section 3776 of the same code the matters to be set forth in the certificate of sale are enumerated. In this case the certificate of sale recited that the tax levy for county purposes was \$26.07. The deed recited that the tax for county purposes was \$26.04. Plaintiff claims that these recitals being different, the deed to the state is void, but neither the total tax nor the amounts which go to make it up are required to be stated. It is the amount of the assessment which must be recited, and that is the same in both documents.

Griggs vs. Hartzoke, 13 Cal. App. 429.

The recitals in a deed of land sold to the state for delinquent taxes are not evidence of the amount of taxes, costs, and charges actually due, and a recital of the amount for which the property was sold to the state furnishes no evidence that such amount was in excess of the actual amount due for taxes, costs, and charges.

Rimmer vs. Hotchkiss, 162 Cal. 385;

Campbell vs. Shafer, 162 Cal. 206;

Hall vs. Park Bank of Los Angeles, 165 Cal. 356. See, also, *Rimmer vs. Hotchkiss*, 14 Cal. App. 556.

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There is nothing in the taxation law that requires the deed from the tax collector to the state to recite the amount due for taxes, costs, and charges or that warrants the court in accepting such a recital in the deed as evidence of the amount due. The law nowhere provides, either expressly or by implication, that such deed to the state should be even *prima facie* evidence of all the facts recited therein.

Campbell vs. Shafer, 162 Cal. 206.

As to the matters expressly required to be recited in such deed by sections 3785 and 3786 of the Political Code, the recitals constitute at least *prima facie* evidence; as to other matters that may be recited therein, the deed furnishes no evidence of the truth of the recitals.

Campbell vs. Shafer, 162 Cal. 206.

The provision of section 3776 of the Political Code requiring the certificate of sale to state "the amount and year of the assessment" can not reasonably be construed as requiring it to recite the amount of taxes, or taxes and costs and charges due at the time of the sale. That requirement is the same as the requirement of section 3785 of that code, that the deed shall give "the assessed value and year of the assessment," and does not refer to the amount of tax, or taxes, costs, etc., due.

Campbell vs. Shafer, 162 Cal. 206; affirming *Griggs vs. Hartzoke*, 13 Cal. App. 429.

The invalidity of a deed to the state for delinquent taxes, on the ground that the land was sold for an amount in excess of the actual amount due on account of taxes, costs, etc., can not be predicated solely upon a recital as to the amount due in the deed.

Campbell vs. Shafer, 162 Cal. 206.

The provision making the recitals in the deed to the state conclusive evidence of the regularity of all proceedings, under section 3787 of the Political Code, has no application to a transfer of title from the state under section 3898 of the Political Code, under which the tax collector's deed is expressly made only *prima facie* evidence of the facts recited therein.

Smith vs. Furlong, 160 Cal. 522.

Where the name of the person assessed appeared on the assessment roll as "E. W. Davis," a recital in the deed to the state that the name of such person was "E. W. Davies," renders the deed void, and it can not be validated by applying the rule of *idem sonans*.

Henderson vs. De Turk, 164 Cal. 296; citing *Baird vs. Monroe*, 150 Cal. 560; *Grimm vs. O'Connell*, 54 Cal. 522; *Emeric vs. Alvarado*, 90 Cal. 444.

The provision of section 3785 of the Political Code that the deed to the state based on a sale for delinquent taxes must recite the "name of the person assessed," requires the recital of the name of the person assessed as it appears on the assessment roll. A failure to observe such requirement renders the deed void, and is not remedied or cured by either section 3807 or 3628 of that code. Neither of those sections purports to apply to the deed made to the state in pursuance of a delinquent tax sale.

Henderson vs. De Turk, 164 Cal. 296; citing *Grimm vs. O'Connell*, 54 Cal. 522.

Section 3787 of the Political Code makes a tax deed evidence of the regularity of such proceedings as are named therein only when it is a deed conforming to the requirements of the law.

Henderson vs. De Turk, 164 Cal. 296.

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It has been uniformly held in this state that a tax deed which misrecites or omits to recite any one of the facts required by the statute to be recited, has no effect at all as a conveyance. The theory is that it is competent for the legislature to prescribe the form of instrument which, as the result of a proceeding *in invitum*, can alone divest the citizen of his title, and that where the statute prescribes the particular form of the tax deed, the form becomes substance, and must be strictly pursued, and it is not for the courts to inquire whether the required recitals are of material facts or otherwise. This rule has become one of property from which the courts should not depart.

Henderson vs. De Turk, 164 Cal. 296.

A recital in a deed executed under a sale made under the provisions of section 3897 of the Political Code that the property was "duly offered" for sale "on the day fixed for the sale," in connection with a recital therein of a published notice of sale "at 12 o'clock m. on the twenty-fifth day of March, 1905," is *prima facie* evidence that the sale was made at the proper place and hour fixed.

Hansen vs. Goldsmith, 170 Cal. 512.

Under section 29 of the Street Opening Act (Stats. 1903, p. 376), the deed is *prima facie* evidence "of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee." The deed itself is, therefore, sufficient evidence to warrant a finding that all the preliminary steps in the proceedings have been taken. It was within the power of the legislature to make the deed *prima facie* evidence of such preliminary steps.

Tilton vs. Russek, 171 Cal. 731.

A deed, reciting that the certificate set forth various matters, including "the time when the purchaser would be entitled to a deed," but without repeating in detail the recital of the certificate setting forth the time when the purchaser would be entitled to a deed, sufficiently conforms to the requirements of section 28 of the Street Opening Act that there shall be recited in the deed "substantially the matters contained in the certificate."

Tilton vs. Russek, 171 Cal. 731.

A certificate of sale and tax deed made pursuant to proceedings had under the Irrigation Act of 1897 (Stats. 1897, p. 254) are both invalid under the provision of section 35 requiring the assessment book to specify the name of the person assessed, section 45 requiring the certificate of sale to state the name of the person assessed, and section 48 requiring that "the matter recited in the certificate of sale must be recited in the deed," where the name of the person assessed appeared on the assessment book as "D. Bruschie," and in the certificate and deed as "D. Bruscia."

Bruschi vs. Cooper, 30 Cal. App. 682; citing *Henderson vs. De Turk*, 164 Cal. 296; *Emeric vs. Alvarado*, 90 Cal. 444.

The provision of section 48 of the Irrigation Act of 1897 that "the matter recited in the certificate of sale must be recited in the deed" includes the "matter" that the deed shall contain the name of the person assessed, when known.

Bruschi vs. Cooper, 30 Cal. App. 682.

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A tax collector's deed, to be evidence of title, must be made in pursuance of a law giving it that effect.

Burr vs. Hunt, 18 Cal. 303.

The description must be certain of itself, and not such as to require evidence *aliunde* to make it certain.

Keane vs. Cannovan, 21 Cal. 291.

NOTE.—But see *Baird vs. Monroe*, 150 Cal. 560, and other late cases.

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A tax deed is not void because a false call has been inserted in the assessment description, unless the owner is misled thereby.

Bosworth vs. Danzien, 25 Cal. 296. See, also, *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530.

A description sufficiently certain to convey land, between man and man, and which, if contained in an agreement to convey, would authorize a court of equity to decree a specific execution, may not answer in a proceeding to enforce the collection of a tax. In the latter case the description must be certain of itself, and not such as to require evidence *aliunde* to render it certain. *Held*, accordingly, that an assessment, one of the calls of which was, "north by the lands of James Reagan and others," was void; and so held, also, with reference to an assessment, which described the land as "bounded south by the lands of Felton and Patterson."

People vs. Mahoney, 55 Cal. 286; citing *Keane vs. Cannovan*, 21 Cal 302; *People vs. Cone*, 48 Cal. 429; *People vs. Pico*, 20 Cal. 595; *People vs. Mariposa County*, 31 Cal. 196; *Kelsey vs. Abbott*, 13 Cal. 609; *People vs. Hyde*, 48 Cal. 431; *San Francisco vs. Quackenbush*, 53 Cal. 52. See, also, *McLauchlan vs. Bonyngue*, 15 Cal. App. 239, 241.

NOTE.—This decision has perhaps been overruled in *Best vs. Wohlford*, 144 Cal. 737. See, also, *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530, 536.

A deed which shows upon its face that there are two lots to which the description equally applies is void for uncertainty, and parol evidence is inadmissible to explain the ambiguity.

Brandon vs. Leddy, 67 Cal. 43;

Cordano vs. Kelsey, 28 Cal. App. 9.

A deed describing the property to be conveyed as "three fractions of lot 7, J and K, Fourth and Fifth streets, Sacramento City," is void for uncertainty. Such a deed, however, is sufficient to give color of title, and possession under it for the requisite time will give a perfect title under the statute of limitations.

Tryon vs. Huntoon, 67 Cal. 325.

A description in a deed is not void for uncertainty merely because it fails to state the state, county, or city in which the property is situated, if without such statement the property can still be located and identified.

McCullough vs. Olds, 108 Cal. 529.

A deed is not void for uncertainty because of errors or inconsistency in some of the particulars of the description. Generally speaking, a deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed. The record of such deed, although it contained an inaccurate description of the property conveyed, was sufficient to put subsequent purchasers on inquiry, so as to charge them with notice of what that inquiry, if duly prosecuted, would have disclosed, to wit, that the deed conveyed the lot as platted on the map of such subdivision No. 6.

Leonard vs. Osburn, 169 Cal. 157.

In an action to quiet title to lands in San Joaquin County, described as "lots numbered 9 and 10 in block C, in McCloud's Addition to the city of Stockton according to the official map or plat" of said addition, "on file in the office of the county recorder," etc., where it was admitted that such described land was outside the city limits, but was part of a school district containing the city, which was assessed by the city for school purposes for the year 1900, and defendant claimed under a school tax deed for the year 1900, which described the lands assessed as "lying and being *within* the said city of Stockton," and assessed simply as "lots 9 and 10, block C, in McCloud's Addition," without further reference—such deed was properly excluded from evidence as not purporting on its

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face to convey any part of the land in controversy, in the absence of other evidence, or offer of evidence, to show its relevancy to the issue, or to show an estoppel upon plaintiff, if it be assumed that such evidence would be admissible.

Oldham vs. Ramsner, 149 Cal. 540.

A description of the property assessed contained in the certificate of sale and tax deed which described it as being within the county of Tulare, and further designates it by section, township, and range, is sufficient, although it fails to state the particular base and meridian of the survey. The courts take judicial notice of the system of surveys prevailing in the state, and that there was but one piece of land in that county which by any possibility could have answered such description.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Harrington vs. Goldsmith*, 136 Cal. 168.

The deed conveyed the real property "with the appurtenances," etc. There was by this no more conveyed than was assessed or included in the certificate of sale. The fact that appurtenances were named in the deed would not convey more property nor less than if the word had been omitted.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Pellisier vs. Corker*, 103 Cal. 516; *Williams vs. Harter*, 121 Cal. 47; *Sparks vs. Hess*, 15 Cal. 186.

The description of the land in such tax deed as "lying and being within said county of Fresno," etc., and in one tax deed as "E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of sec. 23, twp. 16 S., R. 15 E." and in the other as "W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of sec. 23-16-15," is sufficiently certain and definite. Our courts take judicial notice of government surveys of public lands, that all townships in Fresno County are south, and all ranges east of Mount Diablo base and meridian; that the abbreviations used in the description in the deeds are customary, and that "sec. 23-16-15" is intended to import that the section lies in township 16 south and range 15 east in Fresno County.

Stanton vs. Hotchkiss, 157 Cal. 652; citing *Rogers vs. Cady*, 104 Cal. 288, 291; *Harrington vs. Goldsmith*, 136 Cal. 168; *Bank of Lemoore vs. Fulgham*, 151 Cal. 238. See, also, *Main vs. Thornton*, 20 Cal. App. 194.

Any description in a deed by which the property may be identified by a competent surveyor, with reasonable certainty, either with or without the aid of extrinsic evidence, is sufficient.

Thompson vs. McKenna, 22 Cal. App. 129; citing *Best vs. Wohlford*, 144 Cal. 733.

A description in an assessment which accurately describes the land in accordance with a recorded map is valid and sufficient to charge the owners with notice, notwithstanding they acquired their title to the land by a description making reference to another map of later record.

Kehlet et al. vs. Bergman, 162 Cal. 217; citing *Best vs. Wohlford*, 144 Cal. 733.

A description of land in a tax deed as property "situate, lying and being within the county of Los Angeles, State of California, and described thus: In Los Angeles County, Glendale, lot 22, blk. 4," is in apparent accord with the requirements of subdivision 3 of section 3650 of the Political Code, that city or town lots shall be described on the assessment roll by the number of the lot and block, according to the system of numbering in such city or town. Such description implies that there was in such town a general system of numbering the blocks and lots of the town, and that it was according to such system. The description will be held *prima facie* sufficient for identification, at least when

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accompanied by the evidence of a witness who testified to the value and size of the lot described.

Furrey vs. Lantz, 162 Cal. 397; citing *Best vs. Wohlford*, 144 Cal. 733; distinguishing *Miller vs. Williams*, 135 Cal. 183; *Fox vs. Townsend*, 152 Cal. 51; *Chapman vs. Zoberlein*, 152 Cal. 216.

The description of the land to be conveyed is one of the most essential parts of an agreement to sell. Such a contract must be in writing, subscribed by the party to be charged, and must contain such description of the land, either in terms or by reference, that the property may be identified without resort to parol evidence.

Eaton et al. vs. Wilkins, 163 Cal. 742.

Where all of the calls in a deed are for so many "feet" from point to point except the last which is "thence westerly two hundred (200)** to the point of commencement," the description is sufficient notwithstanding the omission to designate the length of the last course by any unit of measurement.

Hanson vs. Goldsmith, 170 Cal. 512. See, also, *Bond vs. Aickley*, 168 Cal. 164.

The description in a deed as "the north 1878 feet of the west 1852 feet of section 9, township 11 north, range 5 east, situated in the county of Placer, state of California," is sufficiently definite and certain to enable the land to be identified.

California Real Estate Company vs. Walkup, 27 Cal. App. 441.

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Under the act of March 15, 1907 (Stats. 1907, p. 290), and amendments thereto, not only is the selling or offering for sale of lots of land in contravention of the provisions of this statute, by reference to an unrecorded map or plat, expressly prohibited, but the act makes it a misdemeanor so to do.

King vs. Johnson, 30 Cal. App. 63.

Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed.

Reamer vs. Nesmith, 34 Cal. 624.

If a deed describes the property conveyed as a lot of land in a town "known and described on the official map of said town" as a certain block, the map may be identified by parol evidence, and when identified, constitutes a portion of the deed.

Penry vs. Richards, 52 Cal. 496.

A sheriff's deed of land sold at an execution sale, which describes the property intended to be conveyed solely by general reference to a non-official map, in order to be operative must clearly identify the particular map referred to; and the deed is void for uncertainty, when the reference contained therein is equally applicable to two different maps, and in an action founded thereon, parol evidence of the sheriff to identify the one referred to is inadmissible.

Cadwalader vs. Nash, 73 Cal. 43.

Under the existing revenue laws, by which all property delinquent for taxes is sold to the state, a description in an assessment of real property, as follows: "In Los Angeles County, in Electric Ry. Homestead Assn. Tr., Lot 17, Block 20," is *prima facie* insufficient to identify the land assessed, and there is no presumption that there is any map in existence a reference to which might serve to identify the land. However, in an action to quiet title, brought by a party relying on a tax

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deed based upon such a description in the assessment, evidence of a map showing the location of the land is admissible *dehors* the deed to show that the assessment was in fact sufficient to identify the land. But, in the absence of such identifying evidence the assessment and deed are insufficient and void.

Fox vs. Townsend, 152 Cal. 51; citing *Miller vs. Williams*, 135 Cal. 183; *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560; *Labs vs. Cooper*, 107 Cal. 656. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308; *McLauchlan vs. Bonyngue*, 15 Cal. App. 239.

The description in the assessment roll of a piece of land assessed as "Lot 34 in University Addition Tract," in the city of Los Angeles, in Los Angeles County, without any reference to any map of the tract, nor anything to indicate the character of the "University Addition Tract," the location in the city of the addition, nor the relative location of lot 34 thereof, is *prima facie* insufficient to make a valid assessment, being a description falling within the cases of *Miller vs. Williams*, 135 Cal. 183; *Labs vs. Cooper*, 107 Cal. 656; *San Diego Realty Company vs. Cornell*, 150 Cal. 637; *Fox vs. Townsend*, 152 Cal. 51. But in an action involving the validity of a tax deed based upon such assessment, the party asserting its validity may introduce extraneous evidence, to show that there is a definite tract known by the name given, that a survey and map thereof have been made, and that the lot designated by number constitutes a known and certain subdivision thereof, and when so explained the assessment will be held good.

Chapman vs. Zoberlein, 152 Cal. 216; citing *Best vs. Wohlford*, 144 Cal. 733; *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Townsend*, 152 Cal. 51. See, also, *McLauchlan vs. Bonyngue*, 15 Cal. App. 239.

Where a lot conveyed by deed is described by reference to a map, such map is made a part of the deed.

Danielson vs. Sykes, 157 Cal. 686;
McLauchlan vs. Bonyngue, 15 Cal. App. 239.

Under the rule for construing the descriptive part of a conveyance of real property, as contained in subdivision 6 of section 2077 of the Code of Civil Procedure, a map referred to in such description, when the reference is inconsistent with other particulars therein, controls the description if it appears that both parties acted with reference to it.

Wheatley vs. San Pedro, Los Angeles and Salt Lake Railroad Company, 169 Cal. 505.

DeWatson vs. San Pedro, Los Angeles and Salt Lake Railroad Company, 169 Cal. 520.

Flint vs. San Pedro, Los Angeles and Salt Lake Railroad Company, 169 Cal. 804.

A description of land in a deed as being in the county of "Ventura, State of California, and bounded an particularly described as follows to wit: The west half of the southwest quarter of section 12, No. 31, containing 70 acres, more or less," is *prima facie* insufficient to identify the property, but extrinsic evidence is admissible as a means of such identification, and reference may be made to the county records for that purpose.

Thompson vs. McKenna, 22 Cal. App. 129; citing *McLauchlan vs. Bonyngue*, 15 Cal. App. 239; *Fox vs. Townsend*, 152 Cal. 51; *Houghton vs. Kern Valley Bank*, 157 Cal. 289.

Where a public street or highway is made a boundary of land the owner is presumed to own to the center of the street or highway, and a transfer of land bounded thereby passes the title of the person whose estate is transferred to the

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soil of the highway in front of the center thereof, unless different intent appears from the grant.

Merchants vs. Grant, 26 Cal. App. 485.

Standing alone and unaided by other evidence, a description of land in an assessment and in all the tax proceedings, as "In the city of Los Angeles, Main Street Tract, Lot 3, Block A," is insufficient for uncertainty. Such description may be aided and the land intended to be assessed sufficiently identified by uncontradicted evidence that there was in that city only one tract of land known and designated as the Main Street Tract, a map of which was on record in the recorder's office, and that lot 3, block A, was clearly marked and designated thereon.

Campbell vs. Shafer, 162 Cal. 206; citing *Baird vs. Monroe*, 150 Cal. 560; *Miller vs. Williams*, 135 Cal. 183; *Best vs. Wohlford*, 144 Cal. 733.

A description of property in a tax deed as "Lying and being in the county of Kern, State of California and described as follows, to wit: E $\frac{1}{2}$ of block 2, Kelly's Addition to Delano," may be explained and rendered certain by the introduction in evidence of the recorded map of Kelly's addition to Delano, accompanied by proof of the location of the block on the ground and that it was marked by stakes set at each corner, and that there was no other recorded map of the addition.

Fitzimons vs. Atherton, 162 Cal. 630; citing *Best vs. Wohlford*, 144 Cal. 737; *Baird vs. Monroe*, 150 Cal. 569; *Fox vs. Townsend*, 152 Cal. 53; *Chapman vs. Zoberlein*, 152 Cal. 216.

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If after the levy of an execution by the sheriff on public land, and before the sale, the judgment debtor, being a pre-emptioner, pays for the land levied upon, and obtains a certificate of purchase, the purchaser at the sheriff's sale succeeds only to the equitable title of the judgment debtor, who, when he obtains legal title by means of the patent, holds it in trust for the purchaser at the sheriff's sale.

Kenyon vs. Quinn, 41 Cal. 325. But see *Emerson vs. Sansome*, 41 Cal. 552.

The title acquired by a sheriff's deed, in pursuance of a sale for a delinquent tax, will prevail over a title acquired by a similar deed for the tax of a previous year, even if the sale for the oldest tax was made after the sale for the later tax.

Anderson vs. Rider, 46 Cal. 134.

A tax deed based upon an assessment made under an unconstitutional act of the legislature will not constitute a cloud upon the title. The plaintiff in an action to enjoin the collection of an unconstitutional tax is presumed to know the law, and to know that a deed given at such a tax sale would be void.

Williams vs. Corcoran, 46 Cal. 553; citing *People vs. Hastings*, 29 Cal. 449; *Riley vs. Lancaster*, 39 Cal. 354; *People vs. Sargent*, 44 Cal. 430; *Bucknall vs. Story*, 46 Cal. 589. See, also, *People vs. Sargent*, 44 Cal. 432, and *People vs. White*, 47 Cal. 617.

A defendant in an action to quiet title, who relies upon a title acquired under a sale for delinquent municipal taxes, may introduce in evidence, the ordinance regulating the assessment of property in the municipality, the certificate of sale for the delinquent taxes, and the tax deeds.

Hinds vs. Clark, 173 Cal. 49.

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The title acquired by the later sale for taxes must prevail over that acquired by a sale for taxes of a prior year.

Chandler vs. Dunn, 50 Cal. 15; affirming *Anderson vs. Rider*, 46 Cal. 138; *Dougherty vs. Henarie*, 47 Cal. 10.

If a tax deed is void, the defendant can not rely on the assessment as translatable of the title.

Wilson vs. Atkinson, 68 Cal. 590. But see *Wilson vs. Atkinson*, 77 Cal. 485.

A tax title acquired by a defendant long prior to judgment in the suit in ejectment is concluded by that judgment.

Nemo vs. Farrington, 7 Cal. App. 443.

The defendant in an action to quiet title to land can not, in proof of title in himself, offer in evidence a tax deed executed by the tax collector of the municipal corporation in which the land is situated, purporting to have been executed by the authority of and pursuant to the provisions of a municipal ordinance, without proof of the ordinance in question. And this is so, notwithstanding the court will take judicial notice of the fact that the municipality is a city of a particular class, and that a tax deed duly executed or proved is, under section 3786 of the Political Code, primary evidence that the taxes were levied according to law.

Metteer vs. Smith, 156 Cal. 572; citing *Cole vs. Seagraves*, 88 Cal. 104; *Bryan vs. Abbott*, 131 Cal. 225.

The recitals in a tax deed are declared by the statute to be *prima facie* evidence of the proceedings recited, but it has never been supposed that a party who sets forth a tax title was thereby excused from alleging that those proceedings were had.

Metteer vs. Smith, 156 Cal. 572; citing *Himmelman vs. Danos*, 35 Cal. 449; *Russell vs. Mann*, 22 Cal. 135.

Whenever a tax title is specially set forth in a pleading, it is necessary that every fact should be averred which is requisite to show that each of the statutory provisions has been complied with.

Kinley vs. Thelen, 158 Cal. 175; citing *Russell vs. Mann*, 22 Cal. 131; *Himmelman vs. Danos*, 35 Cal. 441; *Perine vs. Forbush*, 97 Cal. 305, 309.

In proving a chain of title based upon a tax deed, the deed *to* as well as the deed *from* the state must be offered in evidence.

McArthur vs. Goodwin, 173 Cal. 499.

An attorney at law, who without instructions so to do from his client, secretly purchases tax titles affecting the property of his client, is a mere volunteer, and is not entitled to reimbursement from the client.

McArthur vs. Goodwin, 173 Cal. 499.

Where the complaint in an action to quiet title alleged ownership and right of possession of the lots in controversy, and possession by the defendant, who took issue on plaintiff's ownership, and set up a tax title in himself acquired from the state, the burden of proof is upon the plaintiff to show title in himself, to overcome the possession of defendant; and if he fails in such proof it is not necessary to inquire into his objections to defendant's tax title, for if he has no title, he could not disturb defendant's possession, and it was not his business as to whether or not defendant's paper title was perfect.

House vs. Ponce, 13 Cal. App. 279; citing *Martin vs. Lloyd*, 94 Cal. 195; *Winter vs. McMillan*, 87 Cal. 256; *Heney vs. Pesoli*, 109 Cal. 53; *McGrath vs. Wallace*, 116 Cal. 549.

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LXI. Tax Title. LXII. Tax Title. Adverse Possession.

Unless there was in fact a delinquency, a sale by the tax collector is unauthorized and void, and the tax deed given in pursuance of such sale conveys no title. The only evidence to prove that the taxes of 1898 were not paid is the deed of the tax collector, which recited such fact, which is by the statute intended as *prima facie* evidence of the fact recited. This is subject to counter evidence, which is found in the recitals in the redemption certificate of 1898, which at that time was required by the Political Code to contain a statement of all taxes that were a lien upon the real estate up to the time of redemption.

Boyer vs. Gelhaus, 19 Cal. App. 320.

Tax proceedings are still *in invitum*, in this state, and to be valid must be in strict accord with statutory requirements.

Seccombe vs. Louis Phillips Estate, 162 Cal. 161; citing *Miller vs. Williams*, 135 Cal. 183; *Fox vs. Townsend*, 152 Cal. 51; distinguishing *Davis vs. Pacific Improvement Company*, 137 Cal. 250; *Best vs. Wohlford*, 144 Cal. 734; *Fox vs. Wright*, 152 Cal. 60; *Bank of Lemoore vs. Fulgham*, 151 Cal. 236.

The omission from a deed of the word "feet" in the call locating the starting point of the description, does not render it so indefinite as to make impossible the identification of the land sought to be conveyed, and thus to warrant its exclusion from evidence in an action to quiet title, if every other distance therein is given in the terms of "feet," and the addition of such word would make the description cover the lot in controversy.

Bond vs. Aickley, 168 Cal. 161.

A recital in a deed by the tax collector that he had "caused due notice to be given of the sale of said property at public auction by publishing a notice thereof for at least three weeks" states a publication complying with the provisions of section 3897 of the Political Code requiring a publication of the notice "for three successive weeks," because the word "for," used in the recital, given its ordinary meaning when applied to a period of time, clearly means "during," "throughout," or "during the continuance" of three weeks successively or continuously.

Hanson vs. Goldsmith, 170 Cal. 512.

A recital in a tax deed that the tax collector caused "due notice" to be given by publication "for at least three weeks," in connection with a statutory requirement to that effect, means three successive weeks.

Hanson vs. Goldsmith, 170 Cal. 512.

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The requirement of payment of taxes as an element of adverse possession does not apply where no taxes have been levied.

Oneto vs. Restano, 78 Cal. 374; citing *Heilbron vs. Last Chance Co.*, 75 Cal. 117.

In an action under adverse possession, proof must be made that taxes were actually paid on the land in controversy. It is not sufficient to show payment of taxes on other lands, supposing them to include the lands in dispute.

Reynolds vs. Willard, 80 Cal. 605; distinguishing *Ross vs. Evans*, 65 Cal. 439; *McNoble vs. Justiniano*, 70 Cal. 395.

Section 325 of the Code of Civil Procedure requires a showing of the payment of all taxes in suits under adverse possession; and it is not sufficient to allow such taxes to become delinquent and then cause redemption thereof.

MacDonald vs. McCoy, 121 Cal. 55, 73.

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The payment of taxes required as an element of adverse possession is not complied with by the redemption of the land from tax sales.

Gallo vs. Gallo, 31 Cal. App. 189; citing *MacDonald vs. McCoy*, 121 Cal. 73.

Under section 325 of the Code of Civil Procedure, it is an indispensable prerequisite that the adverse claimant shall have paid all taxes levied and assessed within the period of his occupancy, and if they have been paid prior to the time he offers payment, the tax debt for that year has been satisfied, and the double payment amounts to naught.

Calbergh vs. Easton, 32 Cal. App. 796.

Title to real estate can not be transferred except by an instrument in writing, or by such adverse possession as would be sufficient to create title by prescription. And a person who entered into the possession of land, after the amendment of 1878 to section 325 of the Code of Civil Procedure, under an oral agreement with the owner for its conveyance to him, can not acquire title by adverse possession, if he has never paid the taxes levied and assessed upon the land.

Gibbons vs. Yosemite Lumber Company, 172 Cal. 714.

Where the land in controversy was sold for delinquent taxes assessed to the defendant, and deeded to the state under such sale, the continuity of plaintiff's adverse possession was thereby broken between the time of such sale and the redemption made from the state.

Spotswood vs. Spotswood, 4 Cal. App. 711.

Question as to which party *first* pays the taxes each year becomes material in suits to acquire title by prescription.

Commercial National Bank vs. Schlitz, 6 Cal. App. 174; citing *Cavanaugh vs. Jackson*, 99 Cal. 672; *Hayes vs. County of Los Angeles*, 99 Cal. 74; *Carpenter vs. Lewis*, 119 Cal. 18.

Title by adverse possession can only be acquired by payment in addition thereto of all taxes assessed against the property for the full period of five years, and it can not be established by merely showing that the land has been occupied and claimed for five years continuously, when all taxes assessed against the property are paid by the possessor for four years only, and the taxes for the fifth year have been paid by the owner, though assessed against the possessor.

Glowner vs. De Alvarez, 10 Cal. App. 194.

There are no equities in favor of the adverse possessor of property as against the owner; but strict title by prescription must appear as required by the statute, including the payment by himself of all taxes assessed against the property for the full period of five years, unless it should appear that in any year no taxes were assessed against the property, in which case no payment would be required.

Glowner vs. De Alvarez, 10 Cal. App. 194; citing *Baldwin vs. Temple*, 101 Cal. 396; *Cavanaugh vs. Jackson*, 99 Cal. 672.

The adverse possessor must be as vigilant to pay all taxes assessed against the property promptly as in holding the possession of the land, and if he fails by reason of the payment of one tax by the owner before his title has accrued, he fails entirely. The owner is no more estopped from saving his title by preventing the last act by which a prescriptive title by adverse possession would be perfected against him than he would be to stop adverse possession at any stage of the attempt to acquire his title by prescription.

Glowner vs. De Alvarez, 10 Cal. 194; distinguishing *McNoble vs. Justiniano*, 70 Cal. 395.

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When there is nothing to show that the ditch was separately assessed, or was assessed at all, it was not necessary for plaintiff to show payment of taxes thereon. The law does not require an *easement* to be assessed; and the burden was on the defendant to show that it had been assessed.

Silva vs. Hawn, 10 Cal. App. 544; citing *Harvey vs. Meyer*, 117 Cal. 60; *Oneto vs. Restano*, 78 Cal. 374, 379.

There is, however, evidence sufficient to sustain a finding that the defendants, and each of them, paid the taxes for a period in excess of five years continuously while occupying their respective properties to the extreme lines of their respective buildings. The payment of the taxes on the same property by plaintiff, who was out of possession, would not defeat the rights of the defendants under the circumstances of the case.

Bell vs. Graham, 12 Cal. App. 375; citing *Owsley vs. Matson*, 156 Cal. 401.

One entering into possession of a tract of land under a deed and decree of distribution thereof claims under color of title. The actual occupation and cultivation of a considerable part of the tract so claimed is sufficient, under section 322 of the Code of Civil Procedure, to constitute adverse possession of the entire tract up to the limits described in the deed and decree. Adverse possession, as defined in said code, if continued for a period of exceeding five years, is not only sufficient to bar a claimant under a legal title, but it is also sufficient to create a title. Such possession so continued vests in the possessor a title in fee simple against all other claimants.

Owsley vs. Matson, 156 Cal. 401; citing *Wilson vs. Atkinson*, 77 Cal. 485; *Webber vs. Clarke*, 74 Cal. 16; *Christy vs. Spring Valley W. W.*, 97 Cal. 26; *Hicks vs. Coleman*, 25 Cal. 135; *Davis vs. Perley*, 30 Cal. 639; *Walsh vs. Hill*, 38 Cal. 487.

Where a tax on the land adversely possessed is allowed to become delinquent and a sale has taken place, and, so far as appears, a redemption has been made thereof in good faith by the adverse possessor or his successor in interest while in undisturbed possession, such redemption operates as a payment of the tax, within the terms of the statute requiring the adverse possessor to pay the taxes upon the property claimed.

Where the person in the adverse possession of the land had it assessed in his own name, and paid the taxes levied thereon, he fully complied with the conditions of the statute requiring payment of taxes by the adverse possessor. And it is immaterial that the land was also assessed to the owner of the legal title and the taxes paid by him.

Owsley vs. Matson, 156 Cal. 401; distinguishing *MacDonald vs. McCoy*, 121 Cal. 73; *Cavanaugh vs. Jackson*, 99 Cal. 672; *Carpenter vs. Lewis*, 119 Cal. 18.

A claimant to title to land by adverse possession, by paying the taxes assessed thereon for the period required to perfect a prescriptive title, fully complies with the law in that regard, even though the taxes have also been paid thereon by the holder of the record title.

Cummings vs. Laughlin, 173 Cal. 561.

The fact that, in one year, the land was sold for delinquent taxes, and subsequently redeemed by plaintiff, did not prevent the acquisition of title by adverse possession.

Gray vs. Walker, 157 Cal. 381; citing *Owsley vs. Matson*, 156 Cal. 401.

The rule of law is that where parties in good faith establish a boundary line which may not in fact be the true line according to the calls of their deeds, in which they acquiesce and according to which they occupy their respective lands

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for a period equal to that prescribed by the statute of limitations to bar a right of entry, both parties and their successors in interest are conclusively estopped from questioning it as the true line.

Loustalot vs. McKeel, 157 Cal. 634; citing *Cavanaugh vs. Jackson*, 91 Cal. 580; *Dierssen vs. Nelson*, 138 Cal. 394; *Young vs. Blakeman*, 153 Cal. 481.

As against a purchaser from the state of land acquired by it under a valid sale for delinquent taxes, a title by adverse possession can not be acquired until the expiration of five years from the date of the sale to the state.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Wilhoit vs. Tubbs*, 83 Cal. 287.

A title claimed by adverse possession of part of the patented premises for five consecutive years is not supported, where it appears that all of the taxes assessed on the property claimed were not paid by the claimant for five consecutive years. The fact that the adverse claimant requested the assessor to assess his adverse claim, and that he refused to do so, does not excuse the payment of all taxes assessed on the property to perfect his adverse title, and if he fails by the payment of one tax thereon by the owner, before his title has accrued, he fails entirely.

Peoples Water Company vs. Lewis, 19 Cal. App. 622; citing *McNoble vs. Justiniano*, 70 Cal. 395; *Cavanaugh vs. Jackson*, 99 Cal. 672; *Owsley vs. Matson*, 136 Cal. 401; *Glowner vs. De Alvarez*, 10 Cal. App. 194.

Long continued use by abutting property owners of a strip of land as an alleyway, under claim of right and adversely, establishes a prescriptive title thereto, without the payment of taxes, if none are shown to have been assessed.

Smith vs. Smith, 21 Cal. App. 378.

As between husband and wife, adverse possession can not exist; the marital relation must be terminated, either by divorce or abandonment, in order that one may acquire title from the other by prescription.

Madden vs. Hall, 21 Cal. App. 541;

Matthes vs. Hall, 21 Cal. App. 552.

Married woman, not living separate and apart from her husband, and having no claim in her own right to land, can not acquire title to it as her separate estate by adverse possession.

Madden vs. Hall, 21 Cal. App. 541;

Matthes vs. Hall, 21 Cal. App. 552.

Mere occupancy of land, not under a claim of title, is insufficient to establish title by adverse possession, although the statute at the time of the occupancy does not require the payment of taxes to vest such title.

Janke vs. McMahon, 21 Cal. App. 781.

While a person may acquire title by adverse possession, even as against his own conveyance, still, as an element to constitute such title, in addition to the showing of the other facts necessary to constitute it, he must prove either that no taxes were levied and assessed upon the land, or that he had paid all taxes which were levied thereon.

Allen vs. Allen, 159 Cal. 197; citing *Reynolds vs. Willard*, 80 Cal. 605;

Allen vs. McKay, 120 Cal. 335.

In an ordinary action to quiet title, in which the defendant answers by a general denial, and sets up title in himself under a deed from the state based upon a delinquent tax sale, without either pleading, or otherwise suggesting at the trial, that the plaintiff had failed to do equity in that he had not offered to refund him the amount of taxes, etc., paid by him at the tax sale, a judgment in favor of the

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plaintiff will not be reversed merely because it omits to order such amount to be refunded.

Buck vs. Carty, 162 Cal. 226.

Where a property owner applies for equitable relief against the public authorities, as, for example, the restraint proceedings for the collection or enforcement of taxes assessed against it, or to enjoin the execution of a tax deed, or to cancel a lien or charge for taxes, of record against his land, and it appears that all or some part of the tax charged is justly and equitably due from the plaintiff, or chargeable upon the land, he must, as a condition of obtaining such relief, first pay or offer to pay the amount justly due, or he must be required to do so before the relief to which he shows himself entitled is given.

Holland vs. Hotchkiss, 162 Cal. 366; citing *Couts vs. Cornell*, 147 Cal. 560; *Grant vs. Cornell*, 147 Cal. 565; *Trippet vs. The State*, 149 Cal. 530; *Savings and Loan Society vs. Burke*, 151 Cal. 616; *San Diego Investment Company vs. Cornell*, 151 Cal. 199; *Hibernia Savings and Loan Society vs. Ordway*, 38 Cal. 679; *Harper vs. Rowe*, 53 Cal. 233; *Greenwood vs. Adams*, 80 Cal. 74; *Kittle vs. Bellegarde*, 86 Cal. 556; *Dranga vs. Rowe*, 127 Cal. 506; *Ellis vs. Witmer*, 134 Cal. 249; distinguishing *Flanagan vs. Towle*, 8 Cal. App. 229; *Hotchkiss vs. Hansberger*, 15 Cal. App. 603.

A decree quieting title to land against an asserted claim founded on an invalid tax deed from the state, will not be reversed for the failure of the trial court to provide therein for the payment to the defendant of the amount of money expended for the taxes, costs, and charges actually due, where no right to such reimbursement was asserted by the defendant in the trial court, either by pleading or otherwise.

Rimmer vs. Hotchkiss, 162 Cal. 385;

Rimmer vs. Hotchkiss, 14 Cal. App. 556.

A claim of title to land by adverse possession can not be established in the absence of evidence that the adverse claimant had paid taxes on any part of the land.

Fitzimons vs. Atherton, 162 Cal. 630.

Mere evidence of occupancy and claim of title to land to a particular line by one of two adjoining owners is not sufficient to establish such line as the boundary by acquiescence of estoppel.

Fitzimons vs. Atherton, 162 Cal. 630.

Where it does not appear that one claiming land under a tax deed at any time personally or otherwise occupied and used the land, or that he did anything with reference to the same after receiving the deed save to pay the taxes thereon, he can not sustain a claim of adverse possession.

Cory vs. Hotchkiss, 31 Cal. App. 443.

While the owner in fee of land remains in the actual occupancy and possession thereof, the payment of taxes thereon by a third person, merely as the result of an erroneous assessment, did not affect the title of the owner, or debar her of her right to have it quieted.

Vanderbilt vs. All Persons, etc., 163 Cal. 507.

One having the mere inchoate right to redeem land, the title of which has been conveyed to the State of California for non-payment of taxes, can not maintain an action to quiet title as against a party in possession under claim of title.

Sears vs. Willard, 165 Cal. 12.

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LXII. Tax Title. Adverse Possession. LXIII. Tax Title. Void Deeds, etc.

A plaintiff in an action to quiet title must fail unless he shows title in himself, and he is not in a position to complain if some one else, even when that person is also without title, asserts an interest in the property.

Sears vs. Willard, 165 Cal. 12.

As between the parties to an action to quiet title, neither of whom can connect himself with the legal title, the one who proves prior possession in himself or those through whom he claims, makes out a sufficient showing of ownership entitling him to a decree quieting his title.

Bond vs. Aickley, 168 Cal. 161.

Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

Bond vs. Aickley, 168 Cal. 161.

Title to a public way can not be gained by adverse possession, no matter how long continued.

Central Pacific Railway Co. vs. Droke, 171 Cal. 32.

While adverse possession of grazing land, sufficient to satisfy the statute, may be maintained by using the land for pasture during the grazing season, even though there be no inclosure, the possession must be of an exclusive character.

Strauss vs. Cantly, 169 Cal. 101.

The holder of the tax deed did not establish title by adverse possession, where the evidence merely showed that for a period of twenty years he grazed his cattle on the land, which was entirely uninclosed, that his possession long antedated the acquisition of the tax deed and was not hostile in its inception, and there was nothing to show that its character had been changed. In order to be adverse, possession must be under a continuous claim of title hostile to that of the opposing party for the period prescribed by law.

Jordan vs. Beale, 172 Cal. 226.

LXIII. Tax Title. Adverse Possession—Void Deeds, etc.

A deed describing the property to be conveyed as "three fractions of lot 7, J and K, Fourth and Fifth streets, Sacramento City," is void for uncertainty. Such a deed, however, is sufficient to give color of title, and possession under it for the requisite time will give a perfect title under the statute of limitations.

Tryon vs. Huntoon, 67 Cal. 325.

A tax deed, though void on its face, if containing a proper description of the land, is sufficient to give color of title, under which a claimant of title in good faith may found an adverse possession, so as to set the statute of limitations in motion.

Wilson vs. Atkinson, 77 Cal. 485; distinguishing *Packard vs. Moss*, 68 Cal. 123; *Sunol vs. Hepburn*, 1 Cal. 254, 280; *Woodworth vs. Fulton*, 1 Cal. 295; *Bernal vs. Gleim*, 33 Cal. 668. See, also, *Wilson vs. Atkinson*, 68 Cal. 590.

The tax deed, though invalid as a conveyance of title, was sufficient to give color of title, and set in motion the statute on adverse possession.

Kockemann vs. Bickel, 92 Cal. 665; citing *Wilson vs. Atkinson*, 77 Cal. 485.

Possession obtained under a conveyance of a purchaser at a tax sale who has himself received no tax deed, although no title is acquired through such conveyance, it is sufficient to bring the grantee within the provisions of section 323 of the

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Code of Civil Procedure for the purpose of constituting adverse possession by any person claiming a title founded upon a written instrument.

Millett vs. Lagomarsino, 107 Cal. 102; citing *Packard vs. Moss*, 68 Cal. 123; *Wilson vs. Atkinson*, 77 Cal. 485. See, also, *Simmons vs. McCarthy*, 128 Cal. 455.

A decree of distribution, under which defendants entered into possession and claimed adversely, even if not regularly made and entered, is admissible in favor of the defendants, as showing color of title, under which they claim in support of adverse possession.

Brind vs. Gregory, 122 Cal. 480.

In an action to quiet title based upon prescription, a void tax deed, though not admissible to prove title, is admissible in connection with proof of adverse possession thereunder, to bring the plaintiff within the provisions of section 323 of the Code of Civil Procedure.

Simmons vs. McCarthy, 128 Cal. 455; affirming *Millett vs. Lagomarsino*, 107 Cal. 102. See, also, *Simmons vs. McCarthy*, 118 Cal. 622.

In an action to quiet title, where the defendant relied upon a prescriptive title by adverse possession of herself and her grantor, who entered into possession under an invalid tax title, conceded to be void, where there is no question as to the adverse possession of the defendant and payment of taxes by her, the payment of taxes by her grantor, during the years of such grantor's possession, is sufficiently proved to sustain a finding for the defendant, where there is evidence as to the payment of taxes by such grantor, who then claimed the lot, and there is no question as to the payment of taxes for those years, or that they were paid by any other person than such grantor.

Jones vs. Hodges, 146 Cal. 160.

The grantee under a deed based upon a void decree of divorce, obtains such color of title as will set in motion the statute of limitations on adverse possession.

Donnelly vs. Tregaski, 154 Cal. 261; citing *McCormack vs. Silsby*, 82 Cal. 72.

Neither a devisee of real property nor his grantee entering into possession by virtue of title actually or colorably derived from the estate, and asserting title from no other independent source, can acquire a title against the estate by adverse possession so as to relieve the property from the statutory requirement that it shall be subject to the demands of administration.

Blair vs. Hazzard, 158 Cal. 721; citing *Estate of Hinckly*, 58 Cal. 518; *Estate of Pina*, 112 Cal. 14; *Estate of Strong*, 119 Cal. 663; *Goad vs. Montgomery*, 119 Cal. 552; *Toland vs. Earle*, 129 Cal. 148.

It was not error for the trial court to render a judgment for the plaintiff quieting his title, as against the void tax title held by the defendant, without requiring the plaintiff to pay to the defendant the amount that was paid for the property at the sale. The state had no right to assess taxes on the land of the United States, and a tax title thereunder could convey no title to the state, and it could convey none to defendant. The taxes paid by him were voluntary and can not be recovered; and he can claim no subsequent taxes, or lien therefor, which has not been acquired by him.

Machado vs. Carty, 18 Cal. App. 35; citing *Brooks vs. County of Tulare*, 117 Cal. 468.

There can be no constructive possession without color of title.

Matthes vs. Hall, 21 Cal. App. 552.

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The fact that a claimant under adverse possession did not know that the deed under which the possession was held was defective, did not affect the prescriptive right resulting from the adverse occupancy.

Thompson vs. McKenna, 22 Cal. App. 129.

In order that a tenancy in common may exist between parties in the holding of land, it is necessary that they possess some color of title and assert their claim in some tangible way.

Robinson vs. Bledsoe, 23 Cal. App. 687.

The actual possession and occupancy of land under claim of ownership for any period is sufficient to enable the party in possession to maintain an action to quiet title as against a trespasser, or one who establishes no title in himself.

Hart vs. All Persons, etc., 26 Cal. App. 664.

Evidence that a claimant of land visited it a short time, posted notices thereon claiming the same and warning trespassers, asserted ownership on one or two occasions when he found sheep and cattle running on the premises, allowed a man one winter to camp on the place to hunt and trap, paid the taxes, but made no improvements, is not sufficient to establish title by adverse possession.

Cohen vs. Anderson, 22 Cal. App. 634.

Where the defendant, in a suit to quiet title, raises the defense of adverse possession, but does not claim reimbursement from plaintiff for taxes paid, and the complaint does not disclose such right to reimbursement, the maxim "He who seeks equity must do equity," can not be invoked so as to require the plaintiff before having judgment, to reimburse the defendant.

Cohen vs. Anderson, 22 Cal. App. 634; citing *Holland vs. Hotchkiss*, 162 Cal. 366; *Campbell vs. Carty*, 162 Cal. 382; distinguishing *Buck vs. Carty*, 162 Cal. 226.

A decree of the superior court of this state distributing the estate of a deceased person is in itself presumptive evidence of the jurisdiction of the court to render it, and by itself affords evidence of the transmission of the title of the deceased.

Johnson vs. Carty, 162 Cal. 391.

The fact that an adverse possessor of land believed that he owned the property and recognized no other title is sufficient to establish the good faith necessary to gain title where the adverse possession is under color of title. The mere knowledge of a defect in the title is not sufficient to destroy the adverse character of the possession.

Montgomery & Mullen Lumber Company vs. Quimby, 164 Cal. 250.

It is not essential, in every case, to the continuity of an adverse possession under color of title, that there shall be a continuous personal presence on the land by some person holding for the adverse claimant.

Montgomery & Mullen Lumber Company vs. Quimby, 164 Cal. 250.

The mere offer of the adverse claimant, after his adverse possession had continued for a sufficient length of time to give title, to buy in the claim of the holder of the record title in order to clear his own, was not such an acknowledgment of the outstanding title as operated to break the continuity of the adverse possession.

Montgomery & Mullen Lumber Company vs. Quimby, 164 Cal. 250.

In an action to quiet title to real property in which the defendants claim title by adverse possession and also under a purported tax sale, where the record title to the land is shown to be in the plaintiff, presumptively he was seized of the possession within the time required by law, and the burden is upon the defendants

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to show that they or either of them, having color of title to the land, had held and possessed the same against the plaintiff for the full statutory period of five years preceding the commencement of the action.

Cory vs. Hotchkiss, 31 Cal. App. 443.

LXIV. Tax Title. Strengthening Title by Payment, etc.

An owner can not strengthen his title by permitting the land to be sold at a tax sale and then buying it in, or by having another purchase for him.

Moss vs. Shear, 25 Cal. 38;

Coppinger vs. Rice, 33 Cal. 408.

A purchaser of land, at a sale of the same for taxes, by the agent of one who was in possession thereof, either by himself or his tenants, does not pass or otherwise affect the title to such land.

Bernal vs. Lynch, 36 Cal. 135; citing *Kelsey vs. Abbott*, 13 Cal. 609;

Moss vs. Shear, 25 Cal. 38; *McMinn vs. Whelan*, 27 Cal. 318; *Coppinger vs. Rice*, 33 Cal. 408.

One in possession of property can not acquire or otherwise augment his title by suffering the land to go delinquent for taxes, and then purchasing at a delinquent tax sale.

Barret vs. Amereim, 36 Cal. 322; affirming *McMinn vs. Whelan*, 27 Cal. 318; *Kelsey vs. Abbott*, 13 Cal. 609; *Moss vs. Shear*, 25 Cal. 38; *Coppinger vs. Rice*, 33 Cal. 425; *Bernal vs. Lynch*, 36 Cal. 135.

A party against whom a tax is levied can not obtain any title to property by purchase of it at a sale for the payment of taxes which he should have discharged.

Garwood vs. Hastings, 38 Cal. 216.

A party in possession, whose duty it is to pay the tax, can derive no advantage from a sale for the tax which he ought to have paid without sale.

Reily vs. Lancaster, 39 Cal. 354; citing *Kelsey vs. Abbott*, 13 Cal. 609; *Moss vs. Shear*, 25 Cal. 38; *McMinn vs. Whelan*, 27 Cal. 318; *Coppinger vs. Rice*, 33 Cal. 425; *Bernal vs. Lynch*, 36 Cal. 135; *Barret vs. Amereim*, 36 Cal. 322.

One who is under a moral or legal obligation to pay the taxes is not in a position to become a purchaser at a sale for such taxes; and if such person permits the property to be sold and buys it in, either in person or indirectly through the agency of another, he does not thereby acquire any right or title to the property, but his purchase is deemed a mode of paying the taxes.

Christy vs. Fisher, 58 Cal. 256; citing *Moss vs. Shear*, 25 Cal. 45; *Kelsey vs. Abbott*, 13 Cal. 609.

It is the duty of a mortgagor of land, who is the owner thereof, when an assessment is made, and taxes thereon are levied and become payable, to pay the same; and he can not by neglecting so to do, and by allowing the land to be sold for taxes, add to or strengthen his title by purchasing at the tax sale himself, or by subsequently buying from a stranger who purchased at the sale.

Barnard vs. Wilson, 74 Cal. 512; citing *Moss vs. Shear*, 25 Cal. 38.

A tenant in common is under an obligation to pay the taxes upon the common land, and can not, by neglecting to pay the same, and allowing the land to be sold in consequence of such neglect, add to or strengthen his title by purchasing at the sale himself, or by buying from a stranger who purchased at the sale.

Emeric vs. Alvarado, 90 Cal. 444; citing *Moss vs. Shear*, 25 Cal. 45.

The payment of taxes by the record owner adds nothing to his title.

Baldwin vs. Temple, 101 Cal. 396.

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LXIV. Tax Title. Strengthening Title, etc. LXV. Sales of Tax-Deeded Lands.

The owner of land whose duty it is to pay the taxes can not, by neglecting to pay them and permitting the land to be sold in consequence of his negligence, add to or strengthen his title either by purchasing at the tax sale himself, or by subsequently buying the tax title from a stranger who purchased at the tax sale; but such purchase is deemed one mode of paying the taxes.

Gates vs. Lindley, 104 Cal. 451; ; citing *Moss vs. Shear*, 25 Cal. 45; *Christy vs. Fisher*, 58 Cal. 258; *Barnard vs. Wilson*, 74 Cal. 518.

The owner obtains no new title to the land from a purchaser at a tax sale, and is in the same position after the purchase as though he had paid the taxes each year.

Gates vs. Lindley, 104 Cal. 451.

A subsequent purchaser claiming under the same grantor, and having notice of the rights of a prior purchaser in possession, can not strengthen his title by procuring an outstanding tax title, with like notice.

Beattie vs. Crewdson, 124 Cal. 577.

Since it is the duty of a cotenant to pay the taxes on the common property, he can not strengthen his title as against his co-owners by permitting the taxes to become delinquent, and afterward redeeming the property.

Klumpke vs. Henley, 24 Cal. App. 35; citing *Christy vs. Fisher*, 58 Cal. 256.

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Where the state sells and conveys property acquired by deed to it for taxes, the requirement of section 3898 of the Political Code, that the deed of the state to the purchaser shall recite "the facts necessary to authorize such sale and conveyance," which deed "shall be *prima facie* evidence of all the facts recited therein," does not contemplate that proof of the divestiture of the title of the former owner of the property can be made by mere *ex parte* recital by an executive officer in the subsequent conveyance by the state; and the mere deed to the purchaser containing such recital is not sufficient to show that he acquired the title of the original owner in the absence of the independent proof that such title was acquired by the state.

County Bank vs. Jack, 148 Cal. 437.

The provisions of the present revenue law, whereby the tax collector makes, on behalf of the state as its agent, the deed to the purchaser of lands sold to the state for delinquent taxes, is not in violation of section 14 of article V of the constitution which provides that "all grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state." Lands so acquired by the state were never within the purview of such constitutional provision; and the legislature has full power to make the tax collector or any other person its agent and attorney in fact for the passing of the legal title to such lands.

Bank of Lemoore vs. Fulgham, 151 Cal. 234.

In consideration of the fact that the state's power of taxation is a paramount power and a necessary incident of sovereignty, lands which the state acquires by virtue of tax sales to it may be subsequently disposed of in any way that is not, in and of itself, plainly violative of constitutional provisions.

Bank of Lemoore vs. Fulgham, 151 Cal. 234.

Under section 3897 of the Political Code the notice to be given by the tax collector of the sale by the state of land sold to it for delinquent taxes need not contain the name of the *delinquent* owner of the property. Also, the failure of the tax collector to embody in such notice of sale the *name of the person to whom such property was assessed*, as required by that section, became immaterial after the

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issuance of the deed from the state. Under section 3787 of that code, by the issuance of the deed, the presumption of the regularity and sufficiency of the notice of sale became conclusive.

Fox vs. Wright, 152 Cal. 59; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234. See, also, *Chapman vs. Zoberlein*, 152 Cal. 216; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

The provision of section 3897 of the Political Code, requiring the tax collector to sell the property sold to the state for delinquent taxes, at public auction "to the highest bidder for cash," means that the sale must be made to him who will pay the largest cash sum for the *entire* property. So construed, the section is not unconstitutional, although the law makes no provision for the return to the owner of the property of any excess of the selling price above the accrued taxes, costs, and penalties.

Fox vs. Wright, 152 Cal. 59;

Chapman vs. Zoberlein, 152 Cal. 216;

Chapman vs. Zoberlein, 19 Cal. App. 132;

Merchants Trust Company vs. Wright, 161 Cal. 149;

Furrey vs. Lantz, 162 Cal. 397.

A purchaser of lands at a delinquent tax sale is not entitled, upon the sale being declared invalid, to have paid to him by the owner the *excess* of the sum paid for the lands over and above the taxes, interest, penalties, and costs which were chargeable upon the lands at the time of the sale. The prime object of the state in selling the land is to recover the taxes, penalties, costs, etc., and whoever pays more than the amount thereof does so as a volunteer, and at the risk of the proceedings being found invalid.

O'Reilly vs. All Persons, etc., 29 Cal. App. 49;

Cordano vs. Kelsey, 28 Cal. App. 9.

NOTE.—At the time of the rendition of the above decisions, subdivision 5 of section 3898 of the Political Code contained a provision that a purchaser at a void tax sale could present a claim *against the county* for reimbursement for any *excess* paid in such purchase, and by amendment in 1917 the time for the presentation of such claim against the county is limited to one year.

Deeds from the state to purchasers of lands sold to it for delinquent taxes, held valid.

Davis vs. Le Mesnager, 152 Cal. 97; affirming *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Wright*, 152 Cal. 59; *Carter vs. Osborn*, 150 Cal. 620; *San Diego Realty Co. vs. Cornell*, 151 Cal. 197.

A number of objections are made to the sufficiency of the deed executed by the tax collector, for the state, to the purchaser, on the theory that the requirements of the statute as to the deed made *to the state*, under sections 3785 and 3786 of the Political Code, are equally applicable to deeds made *by the state* in accordance with the provisions of sections 3897 and 3898 of that code. Manifestly, the provisions of sections 3785, 3786 and 3787 have no direct application. The sufficiency of a deed by the tax collector to a purchaser at a sale made after the title has become vested in the state is to be determined by the requirements of sections 3897 and 3898, and it is only necessary that it shall recite so much of the proceedings subsequent to the execution of the deed by the tax collector *to the state*, as may be necessary to show that the tax collector was authorized, as agent, for the state, to sell and convey the state's previously acquired right to the property.

Chapman vs. Zoberlein, 152 Cal. 216; affirming *County Bank vs. Jack*, 148 Cal. 442. See, also, *Chapman vs. Zoberlein*, 19 Cal. App. 132.

Where a sale was made by the state at a time when section 3897 of the Political Code did not require that the notice of sale given by the tax collector in pursuance of the order of the state controller, should state the name of the person owing the delinquent tax that may be against the property or a statement of the taxes, costs,

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penalties and expenses accrued to that date, the omission of such matters is immaterial.

Chapman vs. Zoberlein, 152 Cal. 216;

Fox vs. Wright, 152 Cal. 59.

A deed from the state made by the tax collector to the purchaser is a sufficient divestiture of the title of the state. A patent signed by the governor is not necessary.

Chapman vs. Zoberlein, 152 Cal. 216; affirming *Bank of Lemoore vs. Fulgham*, 151 Cal. 234.

"The property was sold to the state June 27, 1896; the deed *to* the state was made June 28, 1901; the deed *from* the state to the defendant January 14, 1902, and the 'validating act,' which took effect immediately, was approved February 28, 1903; hence, at the time of the deed to the state and from the state to the defendant, the defective tax proceedings had not been cured." *Held*, that the validating or curative act operated to make good the title of the state as of the date of its passage, and that such additionally acquired title went to feed and validate the title of the defendant—the purchaser from the state.

Schamblin vs. Means, 6 Cal. App. 261; citing *Baird vs. Monroe*, 150 Cal. 560; *Fox vs. Wright*, 152 Cal. 59; *Fox vs. Townsend*, 152 Cal. 51.

There is no pretense that the assessment of the taxes was not regular; it is not claimed that appellants ever paid the taxes or offered to do so; there is no contention that any fraud was perpetrated or that the defendant did not act in good faith in purchasing the land from the state, or that he did not pay the full amount that was due. Plaintiffs, twelve years after the land was sold to the state, bring this action in equity to quiet title, without offering to do equity. It would be grossly inequitable to grant them the relief which they seek without requiring them to reimburse respondent for the money which he has paid in reliance upon the state's title. But, from the record before us we must assume that appellants are unwilling to pay the tax, and therefore the court was justified in finding against them.

Flannigan vs. Towle, 8 Cal. App. 229; citing *Esterbrook vs. O'Brien*, 98 Cal. 673; *Ellis vs. Witmer*, 134 Cal. 253; *Couts vs. Cornell*, 147 Cal. 561; *Steele vs. County of San Luis Obispo*, 152 Cal. 785.

The right of the previous owner, under section 3817 of the Political Code, to redeem property sold to the state for delinquent taxes, is lost when the property has been sold by the tax collector upon direction of the controller, and after due notice, to a purchaser who has paid the purchase money to the county treasurer before any attempted redemption was made. The land is disposed of by such sale and payment, though no deed had passed to the purchaser prior to the attempted redemption. The deed was not necessary to complete the sale of the state's title.

Young vs. Patterson, 9 Cal. App. 469; citing *Santa Barbara vs. Savings and Loan Soc.*, 137 Cal. 463; *Baird vs. Monroe*, 150 Cal. 560.

A sale at public auction, under section 3897 of the Political Code, is complete when the auctioneer publicly announces, in any customary manner, that the thing is sold. The purchaser's bid is then accepted, and the bidder can not withdraw it, but must pay the purchase money.

Young vs. Patterson, 9 Cal. App. 469; citing *People vs. White*, 6 Cal. 75.

A sale made by the tax collector on a legal holiday is not void, in the absence of a statutory prohibition against it, and if otherwise made according to law is effectual to dispose of the state's title to one who pays the purchase money.

Young vs. Patterson, 9 Cal. App. 469; citing *Baxter vs. Vineland, etc., Co.*, 136 Cal. 185; *People vs. Town of Loyalton*, 147 Cal. 774; *Heisen vs. Smith*, 138 Cal. 216; *Reclamation Dist. vs. Hamilton*, 112 Cal. 603.

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The publication of the notice of sale required by section 3897 of the Political Code must be for three weeks. The publication as recited in the deeds was made in a paper designated "The Los Angeles Daily Journal." It is argued from this, without any proof, that the paper was in fact a daily journal, and that the notice should have been published as often as the paper was issued during the specified period. But a court will not presume merely from the title of the paper that it was published daily, and, moreover, a publication under this law once a week for the prescribed period is a good publication, even if it appeared in a newspaper published daily.

Fox vs. Wright, 152 Cal. 59; citing *People vs. Reclamation Dist.*, 121 Cal. 522.

The provision of section 3897 of the Political Code that the notice of sale should be published "for at least three successive weeks in some newspaper published in the county," is sufficiently complied with by a publication on one day in each of four successive weeks, in a newspaper of the county which was published daily during that period, the days of such publication being exactly one week apart, although the notice was not inserted except for the one day in each of said weeks.

Chapman vs. Zoberlein, 152 Cal. 216; citing *People vs. Reclamation Dist.*, 121 Cal. 524. See, also, *Chapman vs. Zoberlein*, 19 Cal. App. 132.

Appellant's point is that, although the lot in question, by virtue of the creation of Orange County in 1889, is now located in that county, the taxes for 1887 were levied and the sale of the lot made and the deed therefor executed to the state by the tax collector of Los Angeles County, and that the right of redemption was to be exercised in Los Angeles and not Orange County, and defendant attempted to redeem from the sale to the state through the county auditor of Los Angeles County. *Point not decided.*

Wetherbee vs. Johnston, 10 Cal. App. 264, 265.

The question as to the lots or parcels in which the land is to be sold is controlled, as a general rule, by the assessment list. Where several lots in a block are contiguous, and are owned by a single individual, they may properly be assessed as one parcel (citing *People vs. Morse*, 43 Cal. 534; *Cooper vs. Miller*, 113 Cal. 238). If so assessed, there seems to be no good reason for holding that a sale of them in bulk is not, in effect, a sale of a single parcel. There may, no doubt, be conditions under which a joint assessment of separate lots would be improper, as, for example, where lots are not contiguous, or improvements on one are charged against all (citing *Terrill vs. Groves*, 18 Cal. 149). The mere fact that the sale in this case included several lots sold, apparently, in gross, does not, under the rule declared in *Cooper vs. Miller*, *supra*, establish that the several lots did not, together, form a single parcel.

Houghton vs. Kern Valley Bank, 157 Cal. 289.

A deed from the state for lands sold to it for delinquent taxes, executed by the tax collector as the agent of the state, is not in violation of section 14 of article V of the constitution.

Smith vs. City of Los Angeles, 158 Cal. 702; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234.

The provisions of the Political Code, which provide for a sale by the state of lands conveyed to it for delinquency in the payment of taxes, constitute the tax collector the agent of the state for making such sale and passing the title to the purchaser, and a deed from the state to a purchaser executed by a tax collector, which recites a prior sale of the property to the state for the nonpayment of taxes, a written authorization of the controller for the sale of said property, a published notice of the time of sale thereof at public auction, and a sale pursuant thereto to the grantee of such deed, shows by such recitals that the

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tax collector was authorized and acting as agent of the state in conveying the state's interest in the property to such grantee.

Hanson vs. Goldsmith, 170 Cal. 512; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234; *Chapman vs. Zoberlein*, 152 Cal. 216.

Deed of conveyance from the tax collector to purchaser, under the provisions of section 3898 of the Political Code, held to be sufficient and to divest the state's title.

Griggs vs. Hartzoke, 13 Cal. App. 429; citing *Chapman vs. Zoberlein*, 152 Cal. 216; *Baird vs. Monroe*, 150 Cal. 560; *Bank of Lemoore vs. Fulgham*, 151 Cal. 234.

The notice of sale by the state is required to contain a detailed statement of all delinquent taxes, penalties, costs, and expenses up to the date of sale (Political Code, section 3897). The notice under which the sale was made in this case incorrectly computed the interest, and accordingly the property was sold for an amount slightly in excess of the amount of taxes, penalties, interest and costs; and plaintiff claims that on this account the deed from the state to the defendant is void. Under the statute as it formerly read, when the property was sold to the person who would take the least quantity of land for the amount of the tax, a sale for more than the tax was void. But under the present law this property belonged to the state, and it might sell it for a sum in excess of the amount of the tax (*Fox vs. Wright*, 152 Cal. 59, 62). And while it may be that if the state failed to publish, post or mail the required notice of sale, or improperly described the property in such notice, a sale made thereunder might be void as to plaintiff, still in this case, as the plaintiff before the sale could have tendered the true amount due and redeemed the property, the mere fact that it was sold for a little more than the exact amount due does not render the sale void.

Griggs vs. Hartzoke, 13 Cal. App. 434. But see *Cordano vs. Kelsey*, 28 Cal. App. 9.

By the deed to the state, under the sale for unpaid taxes, the plaintiff was divested of all title to the property in suit. "Such deed conveys to the state the absolute title to the property described therein * * *." (Political Code, section 3787.) Her only right was a right to redeem or repurchase from the state, by complying with the provisions of section 3817 of the Political Code. This she has not done or offered to do. The owner of real property sold and conveyed to the state for unpaid taxes has no title thereto until he has redeemed under the provisions of section 3817, Political Code. Such redemption is in effect a repurchase. Not only is it expressly provided by section 3787 that the deed to the state conveys the absolute title to the state, but it is provided by section 3817 that the recordation of the controller's receipt for the redemption money shall have the effect of a reconveyance of the interest conveyed by the deed to the state. It is thus clear that the delinquent property owner has no title intermediate the sale and deed to the state, and the redemption from the state. Having neither redeemed nor offered to redeem under the provisions of section 3817, Political Code, plaintiff is in no position to attack either the possession or title of defendant, claiming under the sale by the state and the deed thereunder.

Concurring opinion of Mr. Justice Hall in *Griggs vs. Hartzoke*, 13 Cal. App. 429.

When the tax deeds under which the defendant claims are void upon their face, no payment of the taxes due from the state is required as a condition of quieting title against the defendant. Where plaintiff offered before suit to pay the taxes, penalties, and costs, but the defendant refused the same and put plaintiff to the costs and expenses of a suit; the defendant has no ground in equity to claim such reimbursement as a condition of relief in the suit.

Hotchkiss vs. Hansberger, 15 Cal. App. 603; overruling *Flannigan vs. Towle*, 8 Cal. App. 230.

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It was not error for the trial court to render a judgment for the plaintiff quieting his title, as against the void tax title held by the defendant, without requiring the plaintiff to pay to the defendant the amount that was paid for the property at the sale. The state had no right to assess taxes on the land of the United States, and a tax title thereunder could convey no title to the state, and it could convey none to defendant. The taxes paid by him were voluntary and can not be recovered; and he can claim no subsequent taxes, or lien therefor, which has not been acquired by him.

Machado vs. Cantly, 18 Cal. App. 35; citing *Brooks vs. County of Tulare*, 117 Cal. 468.

In an action by one claiming under a tax title from the state to quiet his title against the former owners in possession and their mortgagee, where the evidence and findings show that the property was first sold to the state for the second installment of taxes for the fiscal year 1897-98, and afterward in 1899, for taxes for the fiscal year 1898-99, and that the property was redeemed after the first sale, by the mortgagee, by payment of the amount required therefor, on December 31, 1898, as certified by the auditor, including the taxes for the fiscal year 1898-99, which were then a lien upon the property, the court properly found that at the time of the second sale there was no delinquency upon the property, and that the tax title based thereon is void.

Boyer vs. Gelhaus, 19 Cal. App. 321.

A tax deed is not conclusive proof of the regularity of all proceedings leading up to the sale.

Henderson vs. Ward, 21 Cal. App. 520.

If the deed from the tax collector upon its face showed a noncompliance with section 3897 of the Political Code regarding mailing of notice of sale to the property owner, the deed is void.

Henderson vs. Ward, 21 Cal. App. 520; citing *Smith vs. Furlong*, 160 Cal. 522; *Healton vs. Morrison*, 162 Cal. 670.

In an action by a property owner to have the title quieted as against a purchaser at a tax sale whose deed conveyed no title, it is not essential as a condition precedent that the plaintiff tender the amount of the tax justly assessed against him.

Henderson vs. Ward, 21 Cal. App. 520; citing *Preston vs. Hirsch*, 5 Cal. App. 485; distinguishing *Couts vs. Cornell*, 147 Cal. 560.

Where property was sold to the state in 1894, and the deed, made in 1910, recited that the tax collector mailed a copy of the notice to the person to whom the property was last assessed next before the sale, it will be presumed that the property was duly assessed for each year succeeding 1894 up to the making of the deed to the state, and that the tax collector did, as he stated, know the party to whom it was last assessed.

Brady vs. Bostwick, 21 Cal. App. 526;

Henderson vs. Burke, 21 Cal. 526.

Where the defendant, in a suit to quiet title, raises the defense of adverse possession, but does not claim reimbursement from plaintiff for taxes paid, and the complaint does not disclose such right to reimbursement, the maxim "He who seeks equity must do equity," can not be invoked so as to require the plaintiff, before having judgment, to reimburse the defendant.

Cohen vs. Anderson, 22 Cal. App. 634; citing *Holland vs. Hotchkiss*, 162 Cal. 366; *Campbell vs. Cantly*, 162 Cal. 382; distinguishing *Buck vs. Cantly*, 162 Cal. 226. But see *Cordano vs. Kelsey*, 28 Cal. App. 9.

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When a tax collector has issued a tax deed for land sold by the state, which is defective in not conforming in its recitals to the facts, he has power, without special statutory authorization, to execute a second and corrected deed reciting the facts, but he has no power to execute a second deed which shall misstate the facts respecting any proceedings prior to its execution. Such a deed would be void.

Webster vs. Somer, 159 Cal. 459; citing *Grimm vs. O'Connell*, 54 Cal. 523; *Fox vs. Townsend*, 152 Cal. 51.

Where the state had acquired a tax title, and the tax collector was authorized to sell the same, after publishing and posting the required notices of the time and place of sale, with the statutory contents as provided in section 3897 of the Political Code, including the mailing of a copy thereof "to the party to whom the land was last assessed next before the sale, at his last known post office address," the mailing of this copy was one of the facts necessary to authorize the tax collector to make the sale.

Smith vs. Furlong, 160 Cal. 522;
Campbell vs. Moran, 161 Cal. 325;
Wright vs. Anglo-California Bank, Ltd., 161 Cal. 500;
Johnson vs. Carty, 162 Cal. 391;
Krotzer vs. Douglas, 163 Cal. 49;
Davis vs. Peck, 165 Cal. 353;
Knight vs. Hall—Hall vs. Tucker, 28 Cal. App. 435.

Since the assessment book and delinquent list are required by law to show the known name and address of each taxpayer, and it appears that the assessment book and delinquent list showed the name and address of the taxpayer, for the year for which the property was sold for taxes to the state, and that the same person continuously paid the taxes thereafter, until the deed by the state was executed, it may be inferred from such statutory provisions that the tax collector was required to consult those books to learn the address of the person to whom the property was last assessed, and that the assessment book under which he was required to make the sale afforded him ample means of information as to the last known address of the taxpayer.

Smith vs. Furlong, 160 Cal. 522; distinguishing *Bank of Lemoore vs. Fulgham*, 151 Cal. 240; *Fox vs. Wright*, 152 Cal. 61; *Warden vs. Broome*, 9 Cal. App. 172. See, also, *Smith vs. Boston*, 161 Cal. 341.

The provision making the recitals in the deed to the state conclusive evidence of the regularity of all proceedings, under section 3787 of the Political Code, has no application to a transfer of title from the state under section 3898 of the Political Code under which the tax collector's deed is expressly made only *prima facie* evidence of the facts recited therein.

Smith vs. Furlong, 160 Cal. 522;
Krotzer vs. Douglas, 163 Cal. 49.

Though the state has power to make a deed transferring its title conclusive evidence of the facts recited, yet it has not exercised such power. Again, it appears that the only purpose subserved in making the tax collector's deed from the state only *prima facie* evidence of the facts recited, was to afford the delinquent owner an opportunity to show that express and substantial requirements of the law for his benefit had not been complied with, and hence the deed was invalid. A contrary view would, in effect, render the deed conclusive evidence, instead of *prima facie* evidence as provided.

Smith vs. Furlong, 160 Cal. 522;
Krotzer, vs. Douglas, 163 Cal. 49.

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The recital of "want of knowledge of the address of the taxpayer," in the deed, "and for that reason no copy of the notice was mailed," is, under section 3898 of the Political Code, only *prima facie* evidence of the facts recited; and it was sufficiently rebutted by proof that the tax collector was chargeable with notice of the last known address of the taxpayer. The recital being thus shown to be false in contemplation of law, the tax collector's deed to the plaintiff was invalid, and passed no title from the state.

Smith vs. Furlong, 160 Cal. 522;
Campbell vs. Moran, 161 Cal. 325;
Smith vs. Boston, 161 Cal. 341;
Healton vs. Morrison, 162 Cal. 668;
Davis vs. Peck, 165 Cal. 353;
Knight vs. Hall—Hall vs. Tucker, 28 Cal. App. 435.

In proceedings for sale of tax-deeded property, under the provisions of section 3897 of the Political Code, the giving of notice by mail to the party to whom the land was last assessed next before the sale, at his last known post office address, is a jurisdictional prerequisite to a valid sale by the state, and a deed executed thereunder, without such notice, is invalid.

Smith vs. Furlong, 160 Cal. 522;
Campbell vs. Moran, 161 Cal. 325;
Smith vs. Boston, 161 Cal. 341;
Wright vs. Anglo-California Bank, Ltd., 161 Cal. 500;
Healton vs. Morrison, 162 Cal. 668;
Johnson vs. Carty, 162 Cal. 391;
Krotzer vs. Douglas, 163 Cal. 49;
Davis vs. Peck, 165 Cal. 353;
Cordano vs. Kelsey, 28 Cal. App. 9;
Knight vs. Hall—Hall vs. Tucker, 28 Cal. App. 435.

Section 3897 of the Political Code, requiring the tax collector in making sales of property by the state which it has acquired for delinquent taxes, to sell the property at public auction to the "highest bidder," contemplates a sale of the entire property, to the one bidding the highest cash bid for all the property. So construed, the section is not unconstitutional, although the law makes no provision for the return to the owner of the property of any excess of the selling price above the accrued taxes, charges, and penalties.

Merchants' Trust Company vs. Wright, 161 Cal. 149.

A sale of the entire property, under section 3897 of the Political Code, when a sale of a small portion thereof would be sufficient to enforce the lien of the state, is not unconstitutional, as being a deprivation of an owner of his property without due process of law.

Merchants' Trust Company vs. Wright, 161 Cal. 149; affirming *Fox vs. Wright*, 152 Cal. 59.

It was within the power of the legislature to provide for the present system of taxation, under which the state acquires title to property of one who permits the taxes thereon to become delinquent, and to authorize a subsequent sale thereof. While a delinquent owner can not be deprived of his property under such proceeding without due process of law, that requirement means only that due notice of sale shall be given him, and this is fully accorded him by sections 3764-3767 of the Political Code, which provide for a notice to him by publication of the sale to the state. This is all the notice he is constitutionally entitled to in that respect.

Merchants' Trust Company vs. Wright, 161 Cal. 149; citing *Bank of Lemoore vs. Fulgham*, 151 Cal. 234.

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The giving of notice by mail, under a sale conducted under the provisions of section 3897 of the Political Code, is a jurisdictional prerequisite to a valid sale by the state, at least in all cases where the address of the former owner is not unknown.

Campbell vs. Moran, 161 Cal. 325; affirming *Smith vs. Furlong*, 160 Cal. 522.

As section 3650 of the Political Code requires the assessor to state in the assessment of property "the name and post office address, if known, of the person to whom the property is assessed," the address shown on the *last assessment* constitutes the last known post office address so far as the tax records are concerned, and in the absence of information of a different address, the tax collector must take notice of the address so shown and mail the notice thereto.

Campbell vs. Moran, 161 Cal. 325; affirming *Smith vs. Furlong*, 160 Cal. 522.

The recital in the deed from the state as to the mailing of such notice, even if assumed sufficient to show such mailing as the statute requires, is only *prima facie* evidence of the facts recited, and the owner of the land, in an action to quiet title by one claiming under such deed, may show that the recital was untrue and that the statutory requirement in this regard had not been complied with.

Campbell vs. Moran, 161 Cal. 325; affirming *Smith vs. Furlong*, 160 Cal. 522.

A deed of the tax collector of land sold by the state, which it had acquired for delinquent taxes, *prima facie* establishes the fact that no copy of the notice was mailed, as required by section 3897 of the Political Code, "to the party to whom the property was last assessed next before the sale, at his last known post office address," where it recites that "whereas the address being unknown, the collector did not mail a copy of said notice, postage thereon prepaid, to the party to whom the land was last assessed next before such sale."

Smith vs. Boston, 161 Cal. 341; citing *Smith vs. Furlong*, 160 Cal. 522.

Where a deed from the state for land acquired by it for delinquent taxes recites that the address of the party to whom the property was last assessed was unknown, and that a copy of the notice of sale by the state was not mailed to him, it must be assumed, in accordance with the presumption of the due performance of official duty, if no address is given on any assessment, and in the absence of evidence to the contrary, that the address of such person was not known to the tax collector, and that consequently the mailing of such a notice was not required under section 3897 of the Political Code. Moreover, the mere fact that such person had in fact resided for a number of years at a certain locality in the city in which the land assessed was situated would not be sufficient to overcome the force of this presumption.

Campbell vs. Shafer, 162 Cal. 206; distinguishing *Smith vs. Furlong*, 160 Cal. 522.

Real property acquired by the state under a sale to it for delinquent taxes can not be subsequently sold by it under an order of the state controller, if the legal title thereto, excepting such title as the state acquired by the tax collector's deed, has in the interim become vested in a municipal corporation under condemnation proceedings for a public purpose.

Smith vs. City of Santa Monica, 162 Cal. 221.

The re-enactment of section 3897 of the Political Code by the amendment of 1905, without any saving clause as to proceedings theretofore had under the old section, did not operate to continue it in force or to give it vitality for any purpose

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whatever, and proceedings pending under the old section became *functus officio* immediately after the amendment went into effect.

Buck vs. Canty, 162 Cal. 226.

The state has no vested or fixed right to sell property under the old section or any other section which was impaired by such a construction of the amendment. Such amendment simply affects a change in the remedial method by which the right may be exercised.

Buck vs. Canty, 162 Cal. 226.

Under section 3898 of the Political Code, providing that upon a sale in behalf of the state "the tax collector must execute a deed to the purchaser reciting the fact necessary to authorize such sale and conveyance, which deed shall convey all the interest of the state in and to such property and shall be *prima facie* evidence of all facts recited therein" and by virtue of the provisions of the amendment of 1905 to section 3897 of said code, it was the duty of the tax collector to set forth in the deed, as far as notice is concerned, that it had been published, and either that notice by mail had been given, or that it had not been on account of the address of the party to whom the land was last assessed not being known.

Buck vs. Canty, 162 Cal. 226.

In an ordinary action to quiet title, in which the defendant answers by a general denial, and sets up title in himself under a deed from the state based upon a delinquent tax sale, without either pleading, or otherwise suggesting at the trial, that the plaintiff had failed to do equity in that he had not offered to refund him the amount of taxes, etc., paid by him at the tax sale, a judgment in favor of the plaintiff will not be reversed merely because it omits to order such amount to be refunded.

Buck vs. Canty, 162 Cal. 226. But see *Cordano vs. Kelsey*, 28 Cal. App. 9.

Where real property acquired by the state for delinquent taxes is sold by the tax collector in pursuance of section 3897 of the Political Code, and the post office address of the person to whom the property was last assessed fails to appear on the assessment roll, and is not in fact known to the tax collector, it is not essential to the validity of the sale that such official should resort to outside sources of information to learn the address, in order to mail the notice of the sale as provided in that section. His inquiry, so far as the records of the assessor's office are concerned, need only to extend to an inspection of the assessment rolls from the date of the delinquent assessment to that made last before the sale.

Kehlet et al. vs. Bergman, 162 Cal. 217; distinguishing *Smith vs. Furlong*, 160 Cal. 522. See, also, *Healton vs. Morrison*, 162 Cal. 668.

Under the amendment of March 1, 1905, to section 3897 of the Political Code, it is just as essential to the validity of a sale by the state of real property acquired by it for delinquent taxes, to mail the notice required by the amendment to the person to whom the land was last assessed when his last post office address is known to the tax collector, as it is to give notice by publication. Both notice by publication and by mail where the last post office address is known are essential to the validity of the tax sale.

Buck vs. Canty, 162 Cal. 226;

Canty vs. Staley, 162 Cal. 379;

Campbell vs. Canty, 162 Cal. 382;

Johnson vs. Canty, 162 Cal. 391;

Smith vs. Furlong, 160 Cal. 522;

Krotzer vs. Douglas, 163 Cal. 49;

Davis vs. Peck, 165 Cal. 353;

Cordano vs. Kelsey, 28 Cal. App. 9;

Knight vs. Hall-Hall, vs. Tucker, 28 Cal. App. 435.

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A sale by the state of land acquired by it for delinquent taxes, which was actually made after the taking effect of the amendment of March 1, 1905, to section 3897 of the Political Code, is void, if the notice by mail required by such amendment was not given to the person to whom the land was last assessed, when his post office address was known to the tax collector, notwithstanding the proceedings for the sale were initiated under such section prior to its amendment, and the only notice of sale then required by that section was given by publication and the publication thereof was completed prior to the taking effect of the amendment.

Buck vs. Carty, 162 Cal. 226;

Carty vs. Staley, 162 Cal. 379;

Campbell vs. Carty, 162 Cal. 382;

Johnson vs. Carty, 162 Cal. 391.

The power of the legislature to control the method by which the state shall dispose of the property acquired by it for delinquent taxes is unquestioned, and involves the right to determine at any time the extent and character of notice which shall be given by the agents of the state before the right to make a sale of it shall attach.

Buck vs. Carty, 162 Cal. 226.

The obvious policy of the amendment of March 1, 1905 to section 3897 of the Political Code was to afford a better opportunity to the delinquent owner to redeem the property before actual sale by the state by requiring not only notice by publication, but the additional and more efficacious notice by mail under the condition provided for in the amendment.

Buck vs. Carty, 162 Cal. 226.

Where a property owner applies for equitable relief against the public authorities, as, for example, the restrain proceedings for the collection or enforcement of taxes assessed against it, or to enjoin the execution of a tax deed, or to cancel a lien or charge for taxes, of record against his land, and it appears that all or some part of the tax charged is justly and equitably due from the plaintiff, or chargeable upon the land, he must, as a condition of obtaining such relief, first pay or offer to pay the amount justly due, or he must be required to do so before the relief to which he shows himself entitled is given.

Holland vs. Hotchkiss, 162 Cal. 366; citing *Couts vs. Cornell*, 147 Cal. 560; *Grant vs. Cornell*, 147 Cal. 565; *Trippet vs. The State*, 149 Cal. 530; *Savings and Loan Society vs. Burke*, 151 Cal. 616; *San Diego Investment Company vs. Cornell*, 151 Cal. 199; *Hibernia Savings and Loan Society vs. Ordway*, 38 Cal. 679; *Harper vs. Rowe*, 53 Cal. 233; *Greenewood vs. Adams*, 80 Cal. 74; *Kittle vs. Bellegarde*, 86 Cal. 556; *Dranga vs. Rowe*, 127 Cal. 506; *Ellis vs. Witmer*, 134 Cal. 249; distinguishing *Flanagan vs. Towle*, 8 Cal. App. 229; *Hotchkiss vs. Hansberger*, 15 Cal. App. 603. See, also, *Cordano vs. Kelsey*, 28 Cal. App. 9.

In an action to quiet title by one claiming under a void tax deed from the state, in which the court rendered judgment for the defendant upon evidence establishing the invalidity of the plaintiff's deed, the failure of the court to find upon certain allegations contained in the defendant's answer on the subject of an attempted tender to plaintiff of the amount alleged by him to have been expended by him in connection with his attempted purchase from the state, is immaterial, where the plaintiff, at the trial, offered no evidence showing such expenditures.

Carty vs. Staley, 162 Cal. 379.

A decree quieting title to land against an asserted claim founded on an invalid tax deed from the state, will not be reversed for the failure of the trial court to

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provide therein for the payment to the defendant of the amount of money expended for the taxes, costs, and charges actually due, where no right to such reimbursement was asserted by the defendant in the trial court, either by pleading or otherwise.

Rimmer vs. Hotchkiss, 14 Cal. App. 556;
Rimmer vs. Hotchkiss, 162 Cal. 385.

Although there is nothing in section 3897 of the Political Code relating to the giving of personal notice by mail which specifically requires it to be given for any particular length of time, the reasonable and proper construction of the section demands that *the notice should be mailed as long before the sale as the notice by publication is required to be given; that is, at least three successive weeks before the sale*. A sale based upon a personal notice by mail of less duration, and the tax deed issued thereon, are void.

Healton vs. Morrison, 162 Cal. 668;
Brady vs. Bostwick, 21 Cal. App. 526;
Henderson vs. Burke, 21 Cal. App. 526;
Carroll vs. Bostwick, 22 Cal. App. 147;
Meddock vs. Brown, 27 Cal. App. 290;
Cordano vs. Kelsey, 28 Cal. App. 9;
Knight vs. Hall—Hall vs. Tucker, 28 Cal. App. 435;
Strauss vs. Carty, 169 Cal. 101.

NOTE.—The decisions last above cited were rendered prior to the 1913 amendment to section 3897 of the Political Code (Stats. 1913, p. 559), reading as follows (amending words italicized): "It shall be the duty of the tax collector to mail *within five days after the publication of said notice of sale* a copy of said notice, postage thereon prepaid and registered, to the party to whom the land was last assessed next before the sale, at his last known post office address." The author of the volume suggests to the county tax collectors that they set their "sale day" at least twenty-eight or twenty-nine days after the first publication of notice. Then a notice mailed any time within five days after the first publication will give a full three weeks' personal notice. If a "return envelope" is used, make the request for "return in *thirty* days."

There is no provision in section 3897 of the Political Code making it any concern of the tax collector whether, after he mails the notice, the party to whom it is mailed gets it or not. When he mails it in time, addressed, and registered, his duty is discharged. There is no requirement of the statute that he should put a notification on the letter calling for a return to his office in the event of non-delivery, and there is no warrant for placing a notification thereon calling for such return at any time earlier than the date set for the sale.

Healton vs. Morrison, 162 Cal. 668;
Meddock vs. Brown, 27 Cal. App. 290.

As to the mailing of personal notice required by section 3897 of the Political Code, all the tax collector has to do is to look at the assessment roll and ascertain to whom the property about to be sold was last assessed, and whether the address of the party appears thereon. If it does, he must mail a notice. If it does not, no mailing of notice is required. He is not bound to look beyond or outside the assessment roll to ascertain the address of a party when the assessment roll does not furnish it. If, however, the address is found on the assessment roll, all that is necessary to do is to enclose a copy of the printed notice in an envelope, address it and register and mail it at least three weeks prior to the date set for the sale.

Healton vs. Morrison, 162 Cal. 668; citing *Kehlet vs. Bergman*, 162 Cal. 217. See, also, *Meddock vs. Brown*, 27 Cal. App. 290; *Cordano vs. Kelsey*, 28 Cal. App. 9.

The requirement of section 3897 of the Political Code as amended, that a copy of the notice of sale by the state of property which had been sold to it for nonpayment of taxes should be mailed to the party to whom the land was last assessed at his last known post office address, applies to sales had after the amended section went into effect, even though the publication of notice had been commenced before such

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mailing was essential. Such mailing was one of the facts necessary to authorize the tax collector to make the sale.

Strauss vs. Carty, 169 Cal. 101; citing *Buck vs. Carty*, 162 Cal. 226; *Smith vs. Furlong*, 16 Cal. 522.

A deed from the state, for land sold after the amended section took effect, which failed to recite the mailing of notice, was not the deed provided for by section 3898 of the Political Code, which required the tax collector's deed to "recite the facts necessary to authorize such sale and conveyance."

Strauss vs. Carty, 169 Cal. 101; citing *Carty vs. Staley*, 162 Cal. 379.

If compliance with the requirement of mailing could be shown, although not recited, by a party claiming under the deed from the state, the burden of proof is on him to do so, and in the absence of such showing, he could not be held to have acquired title by virtue of the tax proceedings.

Strauss vs. Carty, 169 Cal. 101; citing *Buck vs. Carty*, 162 Cal. 226;

Krotzer vs. Douglas, 163 Cal. 49; *Davis vs. Peck*, 165 Cal. 353.

In the case of sale by the state of land acquired by it for delinquent taxes, notice of the sale should under section 3897 of the Political Code, be mailed to the party to whom the property was last assessed as long before the sale as the notice by publication is required to be given—that is, at least three successive weeks before the sale; and where but twenty days' notice is given, the sale and the deed made pursuant thereto are void.

Cordano vs. Kelsey, 28 Cal. App. 9;

Healton vs. Morrison, 162 Cal. 668;

Knight vs. Hall—Hall vs. Tucker, 28 Cal. App. 435.

The making of the deed from the state to the purchaser is not conclusive evidence of the regularity of antecedent steps. In this respect the code makes a distinction between deeds *to* the state (Pol. Code, sec. 3787), and deeds *from* the state (Pol. Code, sec. 3898). The latter kind of deed is only *prima facie* evidence of the facts recited therein.

Krotzer vs. Douglas, 163 Cal. 49; citing *Smith vs. Furlong*, 160 Cal. 522.

The mailing of a notice to the party last assessed to an address other than that designated by the statute is no better than a want of any mailing, at least where the notice did not in fact reach the person to whom it should have been sent.

Krotzer vs. Douglas, 163 Cal. 49; distinguishing *Smith vs. Furlong*, 160 Cal. 522. See, also, *Knight vs. Hall—Hall vs. Tucker*, 28 Cal. App. 435.

Where the deed from the state merely recites that the tax collector mailed a copy of the notice to the party to whom the land was last assessed, without any recital that it was mailed to his last known post office address, or that it was addressed in any manner, the question of compliance with the requirement of mailing to the correct address must be determined by the evidence outside of the deed, and the burden of proof, in the absence of a recital, is on the party claiming under the deed.

Krotzer vs. Douglas, 163 Cal. 49; citing *Buck vs. Carty*, 162 Cal. 226.

See, also, *Davis vs. Peck*, 165 Cal. 353, and *Knight vs. Hall—Hall vs. Tucker*, 28 Cal. App. 435.

Where no notice has been mailed, and there is nothing in the tax records to show an address, the tax collector is not required to make search *aliunde*, and his deed, reciting that there was no known post office address, can not be overcome by evidence tending to show merely that the person assessed did in fact reside at a

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certain place; nor is the tax collector bound to take notice of an address which appears only on assessment rolls of years prior to that for which the sale to the state was made.

Krotzer vs. Douglas, 163 Cal. 49; citing *Campbell vs. Shafer*, 162 Cal. 206; *Kehlet vs. Bergman*, 162 Cal. 217.

Section 3650 of the Political Code requires that the post office address, if known, shall be entered on the assessment roll. There is no provision of the kind with reference to the index to the roll. If the tax collector had failed to mail, and had made a deed reciting that the address was unknown, we should hardly be inclined to hold that the effect of the recital was overcome by the mere fact that the index, which is not required to contain an address, did in fact contain one.

Krotzer vs. Douglas, 163 Cal. 49.

Where land is mortgaged to the regents of the University of California, and a tax sale and conveyance of the mortgagor's interest is made to the state and a resale and deed thereupon is made by the state to an individual, under section 3897 of the Political Code, all at times when the constitutional provision was in force declaring that for purposes of taxation the interest of the mortgagor and that of the mortgagee in the land mortgaged should be distinct interests and separately taxable, such sales and deeds did not operate upon the mortgage interest or lien of the mortgagee or vest title in the tax sale purchaser free from the mortgage lien.

Webster vs. Board of Regents of the University of California, 163 Cal. 705.

The mortgage interest belonging to the regents of the University of California being thus free from taxation, it follows that the lien of the tax assessments, made upon the interest of the mortgagor alone, did not extend to or include the interest vested in the state by virtue of the mortgage to the regents, and the tax sales and deeds, made in pursuance of such assessments, were confined to the interest of the mortgagor, and did not operate to transfer or convey the exempt interest of the state represented by the mortgage.

Webster vs. Board of Regents of the University of California, 163 Cal. 705.

Section 3787 of the Political Code makes a tax deed evidence of the regularity of such proceedings as are named therein only when it is a deed conforming to the requirements of the law.

Henderson vs. DeTurk, 164 Cal. 296.

It has been uniformly held in this state that a tax deed which misrecites or omits to recite any one of the facts required by the statute to be recited has no effect at all as a conveyance. The theory is that it is competent for the legislature to prescribe the form of instrument which, as the result of a proceeding *in invitum* can alone divest the citizen of his title, and that where the statute prescribes the particular form of the tax deed, the form becomes substance, and must be strictly pursued, and it is not for the courts to inquire whether the required recitals are of material facts or otherwise. This rule has become one of property from which the courts should not depart.

Henderson vs. DeTurk, 164 Cal. 296.

An action will lie in this state for the reformation of a deed without a demand previously made.

Danielson vs. Neal, 164 Cal. 748.

The inclusion in a deed of the words "more or less" in the description of the quantity of land conveyed, does not preclude a reformation of the deed for mistake in not embracing all the acreage agreed upon.

Danielson vs. Neal, 164 Cal. 748.

NOTE.—Very doubtful if the foregoing would be applicable in tax conveyances.

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A recital in the tax collector's deed from the state, that he "did mail a copy of said notice, postage thereon prepaid and registered, to the party to whom the land was last assessed next before such sale," is not a recital either that the notice had been mailed to such party "at his last known post office address," nor of the fact that no post office address was known, which would excuse the want of mailing.

Davis vs. Peck, 165 Cal. 353; citing *Krotzer vs. Douglas*, 163 Cal. 49.

If the giving of a notice by mailing, or the fact that such notice was excused because no post office address was known, may be shown by evidence *aliunde*, the burden of proof is on the party claiming under such deed to show it. In the absence of such evidence, the party claiming under the deed does not establish title.

Davis vs. Peck, 165 Cal. 353; citing *Buck vs. Carty*, 162 Cal. 226; *Krotzer vs. Douglas*, 163 Cal. 49.

Where the purchaser at a delinquent tax sale which is not effective to pass title proceeds against the owner, the latter may stand upon his strict legal rights and defend his title without tendering payment of any tax.

Moyer vs. Wilson, 166 Cal. 261;

Moyer vs. DeWitt, 166 Cal. 780; citing *Holland vs. Hotchkiss*, 162 Cal. 366; affirming *Henderson vs. Ward*, 21 Cal. App. 520.

A sale by the state of land sold to it for delinquent taxes is void, if made for an amount less than that specifically required by section 3897 of the Political Code.

Jordan vs. Beale, 172 Cal. 226; citing *Fox vs. Wright*, 152 Cal. 59.

In a notice of sale by the state of land for delinquent taxes it is necessary that the amount of the penalties and costs be separately stated.

Cordano vs. Kelsey, 28 Cal. App. 9. See, also, same case in 19 Cal. App. Dec. p. 823.

The purchaser is entitled to reimbursement for the cost of advertising the sale under section 3897 of the Political Code.

Cordano vs. Kelsey, 28 Cal. App. 9.

In proving a chain of title based upon a tax title, the deed *to* as well as the deed *from* the state must be offered in evidence.

McArthur vs. Goodwin, 173 Cal. 499.

The grantee under a grant, bargain, and sale deed purporting to convey the fee acquires any title to the land therein described acquired by his grantor subsequent to the date of the deed even if the grantor had no title whatever to the land at the time the deed was executed.

Cecil vs. Gray, 170 Cal. 137.

LXVI. Equity Points and Principles.

When the tax is valid, but the sale irregular, equity will not cancel the tax deed without a tender of the taxes to the purchaser.

Hibernia Savings and Loan Society vs. Ordway, 38 Cal. 679.

A court of equity will not interfere to cancel a deed upon the ground that it operates as cloud upon the title, when the deed is void upon its face or the result of proceedings void upon their face, and requiring no extrinsic evidence to disclose their illegality.

Cohen vs. Sharp, 44 Cal. 29; citing *Pixel vs. Higgins*, 15 Cal. 127.

It is a universal rule in equity never to enforce either a penalty or a forfeiture.

Keller vs. Lewis, 53 Cal. 113.

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An owner of land is entitled to have his title quieted as against an adverse claimant under a void tax deed, without first reimbursing the defendant for the amount paid by him at the tax sale.

Greenewood vs. Adams, 80 Cal. 74.

Courts of equity do not review proceedings for the assessment of property, whether they be merely irregular or void, unless it is shown that the lands are not subject to taxation, or that there is no law authorizing any proceedings therefor, and so long as there is a moral obligation to pay any portion of the tax, a court of equity will not lend its aid to prevent a cloud upon the title, but will leave the party to his remedy at law.

Esterbrook vs. O'Brien, 98 Cal. 671; citing *Lent vs. Tillson*, 72 Cal. 404.

See, also, *Hellman vs. Shoulters*, 114 Cal. 136.

If the plaintiff ought in equity and good conscience to pay the tax or any part of it, he must pay it, or the part of it in equity and good conscience he ought to pay, before he can ask relief from a court of equity.

Esterbrook vs. O'Brien, 98 Cal. 671.

An answer in an action to recover a delinquent tax, which seeks to defend against the collection of the tax upon the ground that the assessment was fraudulent and corruptly made at an exorbitant valuation, with the intention of discriminating against him and causing him to pay more than his share of the public taxes, but which fails to allege that the defendant ever paid or offered to pay what would have been right for him to pay upon what he concedes would have been a fair valuation of his property, and fails to offer to pay what the court shall ascertain to be just, fails to state facts constituting an equitable defense to the action; and it is not error for the court to exclude evidence offered by him to show the real value of the land and the discrimination made against him in the assessment.

County of Los Angeles vs. Ballerino, 99 Cal. 593.

If the levy of an assessment by an irrigation district is in excess of the power of the board and the tax is more than the plaintiff can be compelled to pay, he will not be entitled to relief in a court of equity until he has paid the amount the board had power to levy upon his land.

Quint vs. Hoffman, 103 Cal. 506; citing *San Jose Gas Co. vs. January*, 57 Cal. 614; *Esterbrook vs. O'Brien*, 98 Cal. 671.

A plaintiff seeking equity must do equity, and a complaint in equity which does not offer to do equity is demurrable.

Buena Vista F. and V. Co. vs. Tuohy, 107 Cal. 243.

A court of equity can not, because of individual hardship, reject from its consideration principles and rules upon which the right to relief has always been based, and the enforcement of moral obligations merely is not within the domain of equity or law.

Gard vs. Gard, 108 Cal. 19.

A suit in equity for an injunction to restrain a sale for the collection of a tax will not lie to correct mere irregularities in the proceedings, even though they might render the sale void, where the plaintiff makes no offer to pay what is due.

Hellman vs. Shoulters, 114 Cal. 136; citing *Esterbrook vs. O'Brien*, 98 Cal. 671; *Lent vs. Tillson*, 72 Cal. 404.

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If the description in an assessment is so ambiguous that a mistake might reasonably be made in a voluntary payment of the tax, the court will not relieve against such mistake.

San Diego Land and Town Company vs. La Presa School District, 122 Cal. 98; citing *Brumagin vs. Tillinghast*, 18 Cal. 265; *Maxwell vs. San Luis Obispo*, 71 Cal. 466; *Cooper vs. Chamberlain*, 78 Cal. 450.

The rule that equity will require a plaintiff to do equity, by paying such taxes as ought equitably to be paid, as a condition of enjoining a tax sale, and that equity will not cancel a void tax deed, which can not amount to a cloud upon title, are inapplicable to an action under section 738 of the Code of Civil Procedure to determine an adverse claim, in which action plaintiff is entitled to judgment, if there is a disclaimer, or if the answer shows no legal defense, and the objection that the adverse claim of the defendant is void upon its face is not available.

Dranga vs. Rowe, 127 Cal. 506; citing *Kittle vs. Belgrade*, 86 Cal. 564; *Harper vs. Rowe*, 53 Cal. 234; *Hearst vs. Egglestone*, 55 Cal. 365; *Pearson vs. Creed*, 78 Cal. 144; *Greenewood vs. Adams*, 80 Cal. 74.

In an action by the owner of the land to quiet his title as against a defendant who asserts liens for taxes under certificates of sale, where it appears that the defendant had failed for a period of from twelve to fourteen years to assert his liens, the court was justified in quieting the plaintiff's title, without requiring the taxes to be paid, and in leaving defendant to his legal rights.

Crocker vs. Dougherty, 139 Cal. 521.

A complaint in equity for an injunction to restrain the execution of a tax deed to the state, on account of irregularities in the description of the land assessed and in the levy and sale, which contains no allegation or showing that the plaintiff has paid or offers to pay the amount of the tax justly chargeable against the land, states no cause of action for equitable relief, and a demurrer thereto was improperly overruled.

Grant vs. Cornell, 147 Cal. 565; affirming *Couts vs. Cornell*, 147 Cal. 560. See, also, *San Diego Realty Co. vs. Cornell*, 151 Cal. 200.

A complaint in equity to restrain the execution of a tax deed to the state on account of defective description of the land in the assessment of taxes, which does not show the doing of equity by alleging payment or an offer to pay plaintiff's justly proportionate share of the taxes, states no cause of action in equity, and a demurrer thereto was improperly overruled. The form of relief sought in equity is immaterial in the application of the rule that the plaintiff must do equity; and the rule is equally applicable where it appears that a part only of the tax against which relief is sought is justly payable and where the whole tax appears to be just. The moral obligation to pay the tax arises on the first Monday of March of each year for which the taxes in question are levied, and such obligation continues notwithstanding the subsequent assessment is rendered invalid by an uncertain description therein of the land assessed. In such a case the legislature could cure the assessment by authorizing an amendment thereof.

Couts vs. Cornell, 147 Cal. 560; distinguishing *Palomares Land Co. vs. County of Los Angeles*, 146 Cal. 530. See, also, *San Diego Realty Co. vs. Cornell*, 151 Cal. 200; *Grant vs. Cornell*, 147 Cal. 565.

If there be a valid claim against such property, the plaintiff can not, in an equitable proceeding, quiet his title against such claim, even though the same may be unenforceable by legal proceedings, without paying the claim. The case is analogous to that of a mortgagor who seeks to quiet his title against a mortgagee whose right to foreclose is barred by lapse of time. It has been repeatedly held that he can not do this without paying the amount due on the mortgage.

Trippett vs. The State, 149 Cal. 521; citing *Booth vs. Hoskins*, 75 Cal. 276; *Spect vs. Spect*, 88 Cal. 437; *Brandt vs. Thompson*, 91 Cal. 458.

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Notwithstanding the lien of a mortgage has become extinguished, the mortgagor may not have his title to the mortgaged premises quieted as against the mortgagee, in an action brought under sections 749, 750, and 751 of the Code of Civil Procedure, without first paying the mortgage debt.

Bulson vs. Moffatt, 173 Cal. 685.

Conceding an assessment to be void, and that nothing was due for taxes under it, the fact that the court, as a condition to the granting of an injunction restraining the issuance of a tax deed, required the plaintiff to pay an amount found to be the just and legal amount for which the property could have been taxed, was without prejudice to the defendants (*Couts vs. Cornell*, 147 Cal. 560). Where the amount of taxes, the value of the property, the tax rate, and the amount due, had all been fixed by the proper fiscal officers, the court had power by its decree to determine that the amount so fixed was the just and legal amount of taxes due on the property, and to order its payment to the tax collector as a condition to the granting of the injunction. If there could be any question as to the general powers of a court of equity to render such a decree, there can be none as to its powers in this state, under section 187 of the Code of Civil Procedure, which provides, that whenever jurisdiction over any matter is conferred, all means necessary to carry the jurisdiction into effect are conferred with it.

San Diego Realty Co. vs. Cornell, 150 Cal. 637;

San Diego Realty Co. vs. Cornell, 151 Cal. 197;

Junipero Land and Water Co. vs. Cornell, 151 Cal. 198;

Fidelity Trust Co. vs. Cornell, 151 Cal. 198;

Terrens Company vs. Cornell, 151 Cal. 198;

San Diego Investment Co. vs. Cornell, 151 Cal. 199;

Citizens' Bank of Los Angeles vs. Cornell, 151 Cal. 199;

Carlson Investment Co. vs. Cornell, 151 Cal. 199.

The execution of a tax deed based on an imperfect assessment will not be restrained at the suit of one who does not offer to do equity by paying such tax as in morals and justice are chargeable against him.

Savings and Loan Society vs. Burke, 151 Cal. 616; affirming *Couts vs. Cornell*, 147 Cal. 560; *Grant vs. Cornell*, 147 Cal. 565.

The rules based upon the maxim that he who seeks equity must do equity, are applicable in suits to recover taxes paid. The idea upon which such a suit is predicated is that the county or municipality has received that which it ought not to retain, and, therefore, when the tax proceedings have been simply irregular, the action will not lie. The action only lies where the tax was void and a mere nullity. Section 3819 of the Political Code, providing for the recovery of taxes paid on void assessments, was not intended to lay down any different rule.

Steele vs. County of San Luis Obispo, 152 Cal. 785; citing *Couts vs. Cornell*, 147 Cal. 560.

A plaintiff who comes into equity for relief must do equity as a condition of equitable relief. A plaintiff who seeks to quiet title against a purchaser from the state for delinquent taxes, twelve years after the land was sold to the state, on the ground that the deed to the state recites that the sale was upon insufficient publication, without offering to pay the taxes assessed, or to reimburse the defendant for the amount paid in good faith to the state for the property, is not entitled to the relief sought.

Flannigan vs. Towle, 8 Cal. App. 229; citing *Esterbrook vs. O'Brien*, 98 Cal. 673; *Ellis vs. Witmer*, 134 Cal. 253; *Couts vs. Cornell*, 147 Cal. 560. But, see, *Holland vs. Hotchkiss*, 162 Cal. 366, and *Cordano vs. Kelsey*, 28 Cal. App. 9.

In cases of implied trusts, forms will be disregarded, and equity will ascertain and act upon the substance of things, and will regard that as done which ought

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to have been done; and the far-reaching vision of equity can not be obscured by devious and intricate methods, or by any pretense whatever, however ingenious, subtle or specious it may be. Equity abhors fraud in all of its guises, and renders abortive the shrewdest intrigues and machinations.

Sanguinetti vs. Rossen, 12 Cal. App. 623.

The law aims to do justice and prevent wrongs, and will not grant affirmative aid to one who proves no title to relief and relies upon a mere piece of paper made without consideration by one having no title.

House vs. Ponce, 13 Cal. App. 279.

The rule that a mortgagor or his successor, with notice of the mortgage, can not quiet his title against the mortgagee, though the debt is outlawed, without first paying the debt, is inapplicable, where the mortgage is by a third party, and the defendant does not sustain the burden resting upon him to allege and prove the connection of plaintiff's title therewith, and where it is alleged and found that plaintiff's title originated from the state subsequently to the mortgage, and was adverse thereto, and it is found that at the time of the commencement of the action plaintiff was the owner and seized in fee of the premises. In such case the findings justified a decree quieting plaintiff's title against the outlawed mortgage, which is not found or shown to have ever been a lien on plaintiff's title.

Marshutz vs. Seltzor, 5 Cal. App. 140; citing *Booth vs. Hoskins*, 75 Cal. 271; *Spect vs. Spect*, 88 Cal. 437; distinguishing *Grant vs. Burr*, 54 Cal. 298; *De Carzara vs. Orena*, 80 Cal. 132; *Brandt vs. Thompson*, 91 Cal. 458; *Boyce vs. Fisk*, 110 Cal. 107; *Hall vs. Arnott*, 80 Cal. 348; *Spect vs. Spect*, 88 Cal. 437.

The rule that plaintiff in an action to quiet title must pay an outlawed mortgage debt as a condition to having his title quieted against it, has no application to a plaintiff who is not the original mortgagor and does not claim under such mortgage.

Klumpke vs. Henley, 24 Cal. 35; citing *Burns vs. Hiatt*, 149 Cal. 617; *Marshutz vs. Seltzor*, 5 Cal. App. 140.

Notwithstanding the lien of a mortgage is extinguished by the barring of the debt by limitations, the mortgagor can not, without paying the debt, quiet his title against the mortgagee; but this rule is not applicable to one who acquired the mortgaged land by purchase for a consideration after the lapse of the time within which an action to foreclose the mortgage could have been brought, and at a time when the records showed that the lien of the mortgage had become extinguished.

Faxon vs. All Persons, etc., 166 Cal. 707;

Bulson vs. Moffatt, 173 Cal. 685.

A grantee of the mortgaged property, after the mortgage debt has become barred by the statute of limitations, may maintain an action to quiet his title against the mortgagee who had never had actual possession of the property, without first paying the mortgage debt.

Muhs vs. Hibernia Savings and Loan Society, 166 Cal. 760; affirming *Faxon vs. All Persons, etc.*, 166 Cal. 707.

Where an assessment is of property not subject to the particular tax or where the persons exacting it are without authority in the premises, and where they are seeking to exercise authority over lands not within their corporate jurisdiction, equity will raise its restraining hand.

Las Animas and San Joaquin Land Company vs. Preciado, 167 Cal. 580.

A property owner can not maintain an action to enjoin the sale of his land for non-payment of a valid (irrigation) assessment, on account of irregularities in

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the proceedings had after the levy looking to the collection of the assessment, without first paying or offering to pay the amount justly due.

Imperial Land Company vs. Imperial Irrigation District, 173 Cal. 660.

The rule that he who seeks equity must do equity applies to suits in equity by the owner of land against the purchaser at a tax sale, or his grantee or assignee, to quiet title or to set aside a tax sale or tax deed, and to suits under section 738 of the Code of Civil Procedure to determine an adverse claim asserted under such sale or deed, in which a judgment for the plaintiff will, in effect, cancel or annul such sale or deed, and repayment of the taxes, penalties, and costs paid and interest thereon to the purchaser or his successor, less rents received, if any, if the purchaser has been in possession, must be offered or required before, or as a condition of, the judgment in favor of the owner.

Holland vs. Hotchkiss, 162 Cal. 366;

Campbell vs. Carty, 162 Cal. 382;

Johnson vs. Carty, 162 Cal. 391;

Cordano vs. Kelsey, 28 Cal. App. 9;

Imperial Land Co. vs. Imperial Irrigation Dist., 173 Cal. 660.

The rule that he who seeks equity must do equity is applicable to an action to determine adverse claims under section 738 of the Code of Civil Procedure, to the same extent as in suits of the character formerly cognizable in equity to remove a cloud or cancel an instrument.

Holland vs. Hotchkiss, 162 Cal. 366;

Johnson vs. Carty, 162 Cal. 391.

A different rule prevails in cases where the tax purchaser is the actor. In such cases, if the purchaser, claiming title under his tax deed, sues for possession of the land, or if he sues the owner to recover the tax paid, as money paid to his use, the general rule is that he can not prevail, that the rule of *caveat emptor* will be strictly applied against him, that a proceeding to assess and collect taxes creates no contract by the owner to pay the taxes assessed, and that the law will not imply a contract by the owner to refund such tax to one who has paid the same upon a tax sale which is void, and this is true in cases where the tax was legally assessed but the proceedings to sell defective, as well as where the assessment itself is unauthorized and void, or where the tax had been previously paid.

Holland vs. Hotchkiss, 162 Cal. 366.

The relief to which such purchaser is entitled must be secured to him either by requiring the payment of the taxes, penalties, and costs, with interest thereon from the time of payment, to be made or deposited in court before giving the judgment, or by inserting in the judgment a clause that it shall not take effect until such repayment is made. A judgment which omits to allow interest, and merely awards the defendant a certain amount for such taxes, penalties, and costs, without making the relief granted to the plaintiff conditional and dependent upon reimbursement to the defendant, is erroneous.

Holland vs. Hotchkiss, 162 Cal. 366;

Johnson vs. Carty, 162 Cal. 391;

Cordano vs. Kelsey, 28 Cal. App. 9;

Imperial Land Co. vs. Imperial Irrigation Dist., 173 Cal. 660.

LXVII. Curative, Remedial, and Validating Legislation.

Irregularities and defects in assessments and other tax proceedings may be cured by legislative enactments.

Moore vs. Patch, 12 Cal. 265;

Cowell vs. Doub, 12 Cal. 273;

People vs. Seymour, 16 Cal. 332;

People vs. Goldtree, 44 Cal. 323.

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Courts have no power to go behind assessments legalized and confirmed by legislative act, to inquire into irregularities of assessment.

People vs. Todd, 23 Cal. 181.

The legislature possesses full power to legalize defective and invalid assessments of property.

People vs. Holladay, 25 Cal. 300. But see *People vs. San Francisco Sav. Union*, 31 Cal. 132.

The want of valuation by the assessor can not be cured by legislative enactment.

People vs. San Francisco Sav. Union, 31 Cal. 132.

The power of the legislature over proceedings relating to taxation, and the power to legalize and confirm irregular assessments, is recognized.

People vs. McCreery, 34 Cal. 432; citing *People vs. Holladay*, 25 Cal. 300; *People vs. San Francisco Sav. Union*, 31 Cal. 132.

The only mode in which defective assessments may be authorized by the legislature to be corrected is to empower the assessor who made the assessments to make the needed correction, or authorize it to be done by others in his presence, and upon his testimony, showing what was intended by the defective matter requiring correction.

People vs. Hastings, 34 Cal. 571; citing *People vs. Hastings*, 29 Cal. 449; *People vs. Holladay*, 25 Cal. 300.

It will readily be conceded that the legislature possesses the power to pass curative acts by which the various acts and proceedings of the officers and boards charged with the levy and assessing of taxes, are rendered valid and legal, notwithstanding that irregularities and errors have intervened. There are, however, defects, which are mostly either of a jurisdictional character, or those which become such by reason of some constitutional provision, which are beyond the reach of curative acts. It is impossible to draw a well defined line between the classes of defects which may, and those which may not, be remedied by curative legislation. They are defects, which, under our constitution, are incurable by any subsequent legislation, such as an assessment made by the board of equalization; exemption of persons or property; the levying of different rates of taxation upon different species of property; and the enumeration might be extended. In those instances, the defect consists of the *want of power or jurisdiction* in the officer or tribunal assuming to act in the matter; and we think it may safely be laid down as a rule in these matters, that wherever the officer had no power or jurisdiction to do the act in question, and not that in its performance he did not pursue the law in respect to time, mode or some other particular, the act is void, and subsequent legislation can not cure the defect.

People vs. Goldtree, 44 Cal. 323.

In the absence of constitutional restrictions, the power of the legislature to validate past transactions which it could have authorized in advance is restrained only by the necessity of protecting vested rights.

City of Sacramento vs. Adams—*Peltier vs. Adams*, 171 Cal. 458.

An act attempting to validate a void assessment on a ~~lot~~ in a city for a street improvement, if it has that effect, does not, by reaction, make the assessment valid as of the date when it was levied, but only validates it at the date of the passage of the act.

Reis vs. Graff, 51 Cal. 86;

People vs. O'Neil, 51 Cal. 91;

People vs. Kinsman, 51 Cal. 92.

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The legislature can not legalize a *void* assessment.

Schumacker vs. Toberman, 56 Cal. 508; citing *Taylor vs. Palmer*, 31 Cal. 240; *People vs. Lynch*, 51 Cal. 15.

Remedial statutes should be liberally construed in favor of the remedy, and rules of procedure are remedial in their nature.

Buck vs. City of Eureka, 97 Cal. 135.

Remedial statutes which are retrospective, but do not impair contracts or disturb vested rights, are not unconstitutional, and the legislature may from time to time alter, change, or modify the remedy, providing in so doing they do not affect the right; but whenever they so far alter the remedy as to impair, destroy, change or render the right scarcely worth pursuing, they necessarily impair the obligations of the contract upon which such right is founded.

Teralta Land and Water Company vs. Shaffer, 116 Cal. 518; citing *Smith vs. Morse*, 2 Cal. 524; *Scarborough vs. Dugan*, 10 Cal. 305; *People vs. Seymour*, 16 Cal. 332; *Moore vs. Martin*, 38 Cal. 428; *Tuolumne Rcd. Co. vs. Sedgwick*, 15 Cal. 515; *Oullahan vs. Sweeney*, 79 Cal. 537; *Bates vs. Gregory*, 89 Cal. 387; *Dentzel vs. Waldie*, 30 Cal. 138.

A levee district, whose organization under an unconstitutional law was irregular and void, may nevertheless have its existence confirmed by direct and positive recognition thereof by legislative acts passed in the exercise of constitutional power.

People vs. Levee Dist. No. 6 of Sutter County, 131 Cal. 30.

The power of the legislature to pass a curative act is the same with respect to local assessments as to general taxes, and is without any limits other than those imposed by the constitution.

Chase vs. Trout, 146 Cal. 350;

Lantz vs. Fishburn, 3 Cal. App. 662;

Lantz vs. Fishburn, 17 Cal. App. 583;

People vs. Van Nuys Lighting Dist., 173 Cal. 792.

If the thing wanting or omitted which constitutes the defect is something the necessity for which the legislature might have dispensed with by prior statutes, or if something has been done, or done in a particular way, which the legislature might have made immaterial, the omission or irregular act may be cured by a subsequent act.

A defect may be in one sense jurisdictional relatively to the authority of the assessors acting under an existing law, and yet not so as it respects the power of the legislature to pass a statute curing the defect.

Where directions upon the subject might originally have been dispensed with, or executed at another time, irregularities arising from neglect to follow them may be remedied by the legislature.

It is competent for the legislature to sanction, retroactively, such proceedings in the assessment of the tax as it could have legitimately sanctioned in advance.

Inasmuch as it is entirely competent for the legislature to prescribe such formulas as it pleases with regard to the levy and collection of taxes, it is fully within its power, by retroactive legislation, to dispense with their necessity and obviate the evils of their non-observance.

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The healing act must in all cases be confined to validating acts which the legislature might previously have authorized or omitted.

Chase vs. Trout, 146 Cal. 350;
Ramish vs. Hartwell, 126 Cal. 443;
German S. and L. Soc. vs. Ramish, 138 Cal. 120;
Rollins vs. Wright, 93 Cal. 395;
Haaren vs. High, 97 Cal. 445;
Lantz vs. Fishburn, 3 Cal. App. 662;
Lantz vs. Fishburn, 17 Cal. App. 583;
People vs. Van Nuys Lighting Dist., 173 Cal. 792.

There is an enforceable obligation to pay a general annual tax, which is in a sense legal as well as moral; a lien therefor is established by law, irrespective of the regularity of the assessment. The assessment is enforceable when any irregularity therein is cured by the authority of the legislature; and such cure imposes no new obligation, but is merely a step in the enforcement of the original obligation to pay the tax.

Couts vs. Cornell, 147 Cal. 560; citing *San Diego vs. Riverside*, 125 Cal. 500; distinguishing *Palomares Land Co. vs. Los Angeles County*, 146 Cal. 530. See, also, *Grant vs. Cornell*, 147 Cal. 565.

The curative act of February 28, 1903 (Stats. 1903, p. 63), is not a "local or special law" within the prohibition of subdivisions 14 and 18 of section 25 of article IV of the constitution, being a general law, applicable to all certificates and deeds having the defects stated. Nor does it operate to deprive the property owner of his property "without due process of law," since it is his failure to redeem within the time fixed by law, after "due process of law" to enforce delinquent taxes, that deprives him of his property, the defect cured being a merely formal matter, not affecting the substantial rights of the taxpayer.

Baird vs. Monroe, 150 Cal. 560; citing *Chase vs. Trout*, 146 Cal. 350; distinguishing *Harper vs. Rowe*, 53 Cal. 233. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

It appears to be thoroughly well settled that in matters pertaining to the collection of taxes it is within the power of the legislature to cure, by retroactive statutes, defects which are in their nature irregularities only, which do not extend to matters of jurisdiction, and that such statutes are not within the constitutional inhibition against the taking of property without due process of law.

Baird vs. Monroe, 150 Cal. 560.

Under the law as it stood prior to the curative act of 1903 (Stats. 1903, p. 63), a deed to the state for delinquent taxes not containing a recital of the time allowed for redemption was void; but the curative act had the effect to legalize deeds theretofore made not containing such recital, provided five years have elapsed since the date of the sale and deed. It is the well settled doctrine in this state, prior to the amendment of our tax laws providing that all property delinquent for taxes shall be declared sold to the state for the taxes and penalties due, instead of to the best bidder at public auction, that a tax deed not containing any recital required by law was void.

Baird vs. Monroe, 150 Cal. 560; citing *Grimm vs. O'Connell*, 54 Cal. 522; *Hubbell vs. Campbell*, 56 Cal. 527; *Anderson vs. Hancock*, 64 Cal. 455; *Simmons vs. McCarthy*, 118 Cal. 622. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

The rule that a statute should not be construed to operate retroactively unless the legislative intention that it should so operate is clearly apparent can not

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apply where it is essentially a curative act, intended to give effect to past transactions which are ineffective because of neglect to comply with some requirement of law.

Baird vs. Monroe, 150 Cal. 560; citing *San Francisco Sav. Union vs. Reclamation District*, 144 Cal. 639, 647.

A defect in a tax deed to the state, in failing to recite the time when the right of redemption had expired, was cured by the act of February 28, 1903, the purpose of which was to confirm, validate, and legalize certain tax deeds. Such act is constitutional and valid.

Carter vs. Osborn, 150 Cal. 620; affirming *Baird vs. Monroe*, 150 Cal. 560.

See, also, *Chapman vs. Moore*, 151 Cal. 509; *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

The curative act found at page 63 of the Statutes of 1903 is constitutional, and acts to relieve certificates of sale and deeds from the irregularities and informalities enumerated therein.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Baird vs. Monroe*, 150 Cal. 560. See, also, *Schamblin vs. Means*, 6 Cal. App. 261; *Phillips vs. Cox*, 7 Cal. App. 308.

Where the sale by the state of the land sold to it for delinquent taxes did not take place until after the full five years allowed for redemption had expired, an error in the certificate of sale in fixing the date when the five years' period of redemption would expire, was cured by the curative act of February 28, 1903 (Stats. 1903, p. 63).

Bank of Lemoore vs. Fulgham, 151 Cal. 234; affirming *Baird vs. Monroe*, 150 Cal. 560.

In the absence of constitutional restrictions, the power of the legislature to validate past transactions which it could have authorized in advance is restrained only by the necessity of protecting vested rights.

City of Redlands vs. Brook, 151 Cal. 474.

A curative act of a conclusive evidence clause in a statute is effective to cure all defects resulting from a failure to comply with provisions which are merely directory of the mode of the exercise of the power. But defects and omissions which so to the jurisdiction of the board to act at all, and which make their action absolutely void can not be cured in this manner.

The People vs. Van Nuys Lighting District, etc., 173 Cal. 792.

The legislative attempt to validate a tax levied by a pretended corporation having no legal authority over the property taxed would, if given effect, be equivalent to the imposition of an obligation by statute without due process of law.

The People vs. Van Nuys Lighting District, etc., 173 Cal. 792.

An imperfection in a deed to the state of land sold for delinquent taxes, in stating the time when the right of redemption had expired, was cured by the confirmatory act of February 28, 1903.

Fox vs. Townsend, 152 Cal. 51; citing *Baird vs. Monroe*, 150 Cal. 560.

The curative act of February 28, 1903, as to certificates of tax sales and tax deeds executed to the state for property sold and deeded thereto for nonpayment of taxes, operated retroactively, and confirmed, validated, and legalized, all tax sales and tax deeds made to the state which would have been otherwise invalid for failure to recite among other things, when the right of redemption would expire,

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or whether it had expired. Under the curative act such a deed to the state was validated and legalized as of the date when it was executed by the tax collector.

Peck vs. Fox, 154 Cal. 744; citing *Baird vs. Monroe*, 150 Cal. 560.

The confirmed and legalized title acquired by the state by reason of the "validating act" (Stats. 1903, p. 63), as of the date of the deed to it by the tax collector, inures to the benefit of a purchaser from the state taking his conveyance prior to the passage of the act.

Peck vs. Fox, 154 Cal. 744; citing *Fox vs. Townsend*, 152 Cal. 51, 55; *Schamblin vs. Means*, 6 Cal. App. 261, 265.

All objections to the tax title (in this action), covered by the decisions in *Baird vs. Monroe*, 150 Cal. 560, and subsequent cases, are concluded by the authority of those cases.

Phillips vs. Cox, 7 Cal. App. 308.

The curative act of 1903 (Stats. 1903, p. 63) has no application to cure a void tax deed to the state for want of giving the notice required by section 3785 of the Political Code, of the time when the period of redemption will expire or application be made to the collector for a deed. The neglect of giving such notice was not cured thereby.

Wetherbee vs. Johnson, 10 Cal. App. 264.

The legislature possesses the power to pass acts curing the failure of a high school district to comply with the statutory requirements for its formation.

People ex rel. Brown vs. Pacific Grove High School District, 11 Cal. App. 209; citing *Board of Education vs. Hyatt*, 152 Cal. 515.

The validating act (Stats. 1907, p. 987—leasing of state tide lands), being general in its terms, and made applicable to all leases of tide lands made by a certain class of municipalities, is not invalid on the ground that it is special legislation.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. Hamilton, 161 Cal. 610.

It is well settled that a legislature may pass a statute which shall be retroactive in character, and open to no constitutional objection upon that account, when it affects the remedy only and does not disturb vested rights or obligations of a contract.

Buck vs. Carty, 162 Cal. 226.

The general rule, applicable alike to constitutions and statutes, is that they are not to be considered retroactive in their operation, unless the intention to make them so clearly appears from their terms.

Wilcox vs. Edwards et al., 162 Cal. 455; citing *Gurnee vs. Superior Court*, 58 Cal. 90; *Watt vs. Wright*, 66 Cal. 204; *Oakland vs. Whipple*, 44 Cal. 303.

Subdivision 11 of the old section 1671 of the Political Code, and section 1724 of that code, adopted in 1909, had the effect of validating and making unquestionable the legal existence of a union high school district which had been operating as such for one year. Such curative acts are valid.

Wood vs. County of Calaveras, 164 Cal. 398.

Where the determination of an interested tribunal is required to be reported to another body for correction and confirmation and opportunity is there afforded after reasonable notice to make objections on account of such interest, a failure to appear and make the objections operates as a waiver and precludes the party from afterwards raising it or claiming that the determination is for that reason void. The principle being that as the defect is not jurisdictional, because the

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statute does not expressly forbid such action, the objection constitutes a mere irregularity which must be urged at the hearing provided for that purpose the same as any other objection to the regularity or fairness of the assessment.

United Real Estate and Trust Company vs. Barnes, 159 Cal. 242.

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The state is not bound by the general words of a statute which would operate to trench upon its sovereign rights, injuriously affect its capacity to perform its functions, or establish a right of action against it.

Mayrhofer vs. Board of Education, 89 Cal. 110;
Whittaker vs. County of Tuolumne, 96 Cal. 100;
Skelly vs. Westminster School Dist., 103 Cal. 652;
County of Colusa vs. County of Glenn, 117 Cal. 434;
Russ & Sons Co. vs. Crichton, 117 Cal. 695;
Witter vs. Mission School Dist., 121 Cal. 350;
Savings and Loan Soc. vs. San Francisco, 131 Cal. 356;
Tuttle vs. Block, 104 Cal. 443;
People vs. Craycroft, 111 Cal. 544;
San Francisco, etc., Land Co. vs. Banbury, 106 Cal. 129;
People vs. Jeffords, 126 Cal. 296;
Reclamation District vs. Sacramento County, 134 Cal. 477;
Bates vs. County of Santa Barbara, 90 Cal. 543;
Smith vs. Broderick, 107 Cal. 644;
Estate of Royer, 123 Cal. 614;
Columbia Sav. Bank vs. Los Angeles County, 137 Cal. 467;
City St. Imp. Co. vs. Regents, University, 153 Cal. 776.

The rule is settled that the statute of limitations does not apply to or bind the state, unless it is made to do so by express words or necessary implication; and the fact that the general words of the statute may be apparently broad enough to include, will not be sufficient to affect its rights, unless that construction is clear and indisputable upon the text of the statute.

Ross & Sons Co. vs. Crichton, 117 Cal. 695; citing *Tuttle vs. Block*, 104 Cal. 443.

Where it is necessary to give effect to contracts and carry out the intention of parties, the first day is, by the courts, included, or excluded, as the case requires, there appearing to be no uniform rule on the subject; but when a time for deliberation is allowed, the exclusive rule should be adopted. When a statute limits a proceeding against a party to six months, a year, etc., after an act done, the day on which the act was done is to be reckoned in the six months, year, etc.

Price vs. Whitman, 8 Cal. 412.

Where a power is given by statute, everything necessary to make it effectual or requisite to attain the end is implied.

State vs. Poulterer, 16 Cal. 514.

When a term, not technical, is used in a statute it must be taken and used in its ordinary general sense, unless a special definition is given.

Gross vs. Fowler, 21 Cal. 392.

When two laws are passed on the same day in relation to the same subject matter, they are to be read together as if parts of the same act.

People vs. Jackson, 30 Cal. 427;
Taylor vs. Palmer, 31 Cal. 240.

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Where time is prescribed to a public body in the exercise of a function in which the public is concerned, the time designated is merely directory, unless there are negative words restraining the exercise of the power to that time.

Tuohy vs. Chase, 30 Cal. 524.

When two acts are *in pari materia*, or one is an amendment of the other, it will be presumed that a word used in a certain sense in the first act was used in the same sense in the subsequent one.

Robbins vs. Omnibus Railroad Co., 32 Cal. 472.

Upon the question whether a judgment is merely voidable, or absolutely void, there is a distinction between judgments for taxes and judgments for other causes of action.

Mayo vs. Ah Loy et al., 32 Cal. 477.

Where a statute specified a time at or within which an act is to be done, it is usually held to be directory, unless time is of the essence of the thing to be done, or the act contains negative words, or shows that the designation of the time was intended as a limitation of power, authority, or right.

People vs. Board of Supervisors, Solano County, 33 Cal. 487.

“Color of title” is defined in *Wright vs. Mattison*, 18 How. 56, to be “that which in appearance is title but which in reality is no title.” It is that which the law will consider *prima facie* a good title, but which, by reason of some defect, not appearing on its face, does not in fact amount to title. An absolute nullity, as a void deed, judgment, etc., will not constitute color of title.

Bernal vs. Gleim, 33 Cal. 668.

NOTE.—But see cases cited herein under “Tax Title, adverse possession—void deed, etc.”

A law which can not take effect as to one part of its subject-matter, because it is unconstitutional as to that part, may take effect as to another part of its subject-matter which is constitutional.

Mills vs. Sargent, 36 Cal. 379.

The word “grant” is effectual to convey an estate in a corporeal hereditament. It has become a generic term, applicable to the transfer of all classes of real property.

San Francisco and Oakland R. R. Co. vs. City of Oakland, 43 Cal. 502.

The legislature has no power to create a board composed of executive officers of the state and delegate to it legislative duties.

People vs. Parks, 58 Cal. 624.

The title to swamp and overflow lands never vests in the state until the commissioner of the general land office certifies them over to the state as swamp and overflow.

Wright vs. Roseberry, 63 Cal. 252.

The assessor does not act judicially in making an assessment for taxes.

City and County of San Francisco vs. Talbot, 63 Cal. 485.

It was the intention of the legislature in adopting the codes to establish one revenue system, which should be applicable alike to all counties.

Mitchell vs. Crosby, 46 Cal. 97.

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The general revenue system provided in the Political Code applies to the city and county of San Francisco.

People vs. Reis, 76 Cal. 269;

Savings and Loan Soc. vs. Austin, 46 Cal. 415.

Where the public interest or private right requires that the thing should be done, then the word "may" is generally construed to mean the same as "shall" or "must."

Hayes vs. County of Los Angeles, 99 Cal. 74; citing *Estate of Ballentine*, 45 Cal. 696.

The provisions of the statutes upon the subject of taxation for the assessment of property are *in invitum*, and must be strictly followed to divest title.

Gwynn vs. Dierssen, 101 Cal. 563; citing *Hearst vs. Egglestone*, 55 Cal. 365; *Weyse vs. Crawford*, 85 Cal. 199; *Shipman vs. Forbes*, 97 Cal. 574.

The right to take the property of the individual for public purposes, by way of taxation, must find an express statutory warrant, and all laws having this object are to be construed strictly in favor of the individual and against the state.

Merced County vs. Helm, 102 Cal. 159; citing *Monterey County vs. Abbott*, 77 Cal. 541.

All statutes must be construed with reference to well known principles and rules of law existing at the time of enactment.

Whitney vs. Dodge, 105 Cal. 192.

Taxes do not bear interest unless it is expressly given by statute.

People vs. Central Pacific Railroad Company, 105 Cal. 576; citing *People vs. North Pacific C. R. R. Co.*, 68 Cal. 551.

The provisions of section 3716 of the Political Code, which declares that every tax has the effect of a judgment against the person, can not be construed as giving it the effect of bearing interest.

People vs. Central Pacific Railroad Company, 105 Cal. 576.

A deputy can not be appointed unless authority to make the appointment has been conferred by law, and a mere clerk or employee can not be empowered by an officer to perform official acts.

Rauer vs. Lowe, 107 Cal. 229.

Courts take judicial notice of the revenue laws, and, if a tax deed recites the performance of the acts required by those laws, the burden of proving a non-compliance is cast upon those who attack the regularity of the several essential acts; but courts do not take judicial notice of the ordinances of municipal corporations authorizing tax proceedings, or of the time when, if passed, they take effect.

Carpenter vs. Shinners, 108 Cal. 359; citing *Lucas vs. San Francisco*, 7 Cal. 475; *City of Napa vs. Easterby*, 61 Cal. 517.

It is a general rule that the provisions of law as to the time upon which, or within which, acts are to be done by a public officer regarding the rights and duties of others are directory, unless the nature of the act or language of the legislature makes it clear that the time fixed is by way of limitation.

Buswell vs. Board of Supervisors, Alameda County, 116 Cal. 351; citing *Payne vs. San Francisco*, 3 Cal. 122; *Hart vs. Plum*, 14 Cal. 149; *People vs. Canal Co.*, 48 Cal. 143.

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The fact that a law may work hardship in extreme cases can not be considered in determining its validity.

Rode vs. Siebe, 119 Cal. 518.

A judgment *in rem* is binding upon the state.

People vs. Linda Vista Irrigation District, 128 Cal. 477; citing *State vs. McGlynn*, 20 Cal. 233.

The state can acquire no title to lieu land until the land is selected, and the selection approved by the United States land department, and the land is listed to the state.

Allen vs. Pedro, 136 Cal. 1; citing *Roberts vs. Gebhart*, 104 Cal. 67.

Judgment for taxes, rendered under the provisions of section 3819 of the Political Code, bear interest at the legal rate from entry of judgment.

Columbia Savings Bank vs. County of Los Angeles, 137 Cal. 467; citing *Mackey vs. San Francisco*, 128 Cal. 678; *Savings and Loan Soc. vs. San Francisco*, 131 Cal. 356; distinguishing *Mayrhofer vs. Board of Education*, 89 Cal. 110; *Whittaker vs. Tuolumne County*, 96 Cal. 100.

The general statute of limitations operates only to bar suits, and does not apply to the holders of certificates of sale for taxes, or to the lien of the state for taxes, which passes to the purchaser and which can be foreclosed without suit by the issuance of the tax collector's deed, and in no other way.

Crocker vs. Dougherty, 139 Cal. 521.

It is for the legislature alone to impose the burden of taxation, and the courts have no power to impose a burden of taxation not imposed by the legislature.

Estate of Johnson, 139 Cal. 532.

The collection of taxes belongs to the executive branch of the government, and can be assumed by the judiciary only under express legislative authority therefor. Courts may inquire into and determine the validity of the assessment or other proceedings, but unless the statute has declared it to be a lien, the court can not adjudge it to be one. A court of equity, as such, in the absence of statutory authority, has no jurisdiction to enforce a lien that is created by statute, for the enforcement of which the statute has provided a mode. The enforcement of the lien in such case can be only in the mode provided by statute.

Boskowitz vs. Thompson, 144 Cal. 724.

It is a rule of almost universal application, that, where a right is created solely by a statute, and is dependent upon the statute alone, and such right is still inchoate, and not reduced to possession, or perfected by final judgment, the repeal of the statute destroys the remedy, unless the repealing statute contains a saving clause.

Trippett vs. State, 149 Cal. 521; citing *Napa State Hospital vs. Flaherty*, 134 Cal. 315; *Estate of Stanford*, 126 Cal. 112.

In ad valorem tax matters, the due process provision of the federal constitution requires that the state must provide a means of ascertaining the amount of the tax, and for notice and appraisement. Until these things are done, the state has no power to take private property.

Trippett vs. State, 149 Cal. 521.

Sections 3776 and 3777 of the Political Code, which provided for the issuance of a certificate upon the sale to the state for delinquent taxes, having been repealed by the act of 1895 (Stats. 1895, p. 19), the attempt afterwards to amend the

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repealed sections by the statutes of 1895, page 327, was of no effect. And a certificate, issued after the repeal of said sections (and before such defect was cured), will be disregarded in determining the validity of a sale.

Carter vs. Osborn, 150 Cal. 620;

Schamblin vs. Means, 6 Cal. App. 261;

Phillips vs. Cox, 7 Cal. App. 308.

NOTE.—This defect was cured in 1897, when said sections were again "added" to the Political Code. See Statutes 1897, p. 432.

The courts take judicial notice of the system of surveys prevailing in this state, including the meridians.

Bank of Lemoore vs. Fulgham, 151 Cal. 234; citing *Harrington vs. Goldsmith*, 136 Cal. 168.

An owner of land bounded by a public street is presumed to own the fee to the center of the way.

Colegrove Water Co. vs. City of Hollywood, 151 Cal. 425.

Where coterminous proprietors of land in good faith agree upon, fix, and establish a boundary line between their respective tracts of land, in which they acquiesce, and under which they occupy, for a period equal to that fixed by the statute of limitations, the line as thus established is binding upon them. But this rule is subject to the limitation that the agreement must be for the purpose of settling some uncertainty or dispute as to the real boundary.

Mann vs. Mann, 152 Cal. 23;

Lewis vs. Ogram, 149 Cal. 505;

Cooper vs. Vierra, 59 Cal. 283;

White vs. Spreckels, 75 Cal. 616;

Helm vs. Wilson, 76 Cal. 485;

Dierssen vs. Nelson, 138 Cal. 398.

Reference may be had, in aid of the construction to be given the provisions of the constitution, to the debates had in the constitutional convention, and to the legislative and executive construction thereof, as being entitled to a certain amount of persuasive force.

Bank of Woodland vs. Pierce, 144 Cal. 434.

Courts do not resort to the debates of a constitutional convention in construing a provision of the constitution which is not in its terms ambiguous or uncertain. When such resort is had by the courts it is less for the purpose of learning the opinion of particular members upon points of verbal construction than for informing themselves historically of the evil which it was intended to guard against or the benefit to be secured.

Matter of Smith, 152 Cal. 566.

Any words in a deed which show an agreement to do a thing, make a covenant. But where words do not amount to an agreement, covenant does not lie.

O'Sullivan vs. Griffith, 153 Cal. 502.

When a legislative provision is capable of two constructions, one consistent and the other inconsistent with the provisions of the constitution, it is a well-recognized principle of construction that the statute should be given that construction which will make it harmonious with the constitution and comport with the legitimate powers of the legislature.

Chesebrough vs. City and County of San Francisco, 153 Cal. 559; citing *People vs. Frisbie*, 26 Cal. 135; *Jacobs vs. Supervisors*, 100 Cal. 121; *In re Mitchell*, 120 Cal. 384.

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While the courts have never hesitated to construe the word "may" in a statute as "must" or "shall," when the context and the policy of the law demand that interpretation, yet the legislative intention must plainly appear before such judicial construction will be made, and if no special reason for a mandatory construction of that word appears, it will be construed as conferring merely a discretionary power.

Ostrandor vs. City of Richmond, 155 Cal. 468.

The boundary lines of a county are fixed by law, and in an action to recover taxes levied by such county on land, on the ground that it was not situated within that county, the court, in the absence of evidence as to the *situs* of the land, must take judicial notice of its situation either within or without the county limits.

Merritt vs. Trinity County, 3 Cal. App. 168; citing *Rogers vs. Cady*, 104 Cal. 288.

An "exception" is always of some part of the estate not granted at all. A "reservation" is always of something taken back out of that which is clearly granted.

Pitcairn vs. Harkness, 10 Cal. App. 295; citing *Sears vs. Ackerman*, 138 Cal. 586.

From the use of word "grant" in a deed of grant, bargain and sale, the law implies a covenant against encumbrances; and the lien of a valid street assessment is an encumbrance within the meaning of such covenant.

Berkeley Development Company vs. Marx, 10 Cal. App. 410.

A deed is presumed to have been delivered at its date and the burden is upon one who disputes that fact to show otherwise.

Boye vs. Andrews, 10 Cal. App. 494.

Where but one section or sections of an act are to be amended, it is not necessary to republish the entire act; but it is sufficient compliance with section 24 of article IV of the constitution to republish the section as amended.

Estate of Campbell, 143 Cal. 623.

If the language used in a constitutional provision plainly and unequivocally shows a certain and definite purpose to be accomplished thereby, it is the duty of the courts to so construe it as to carry that purpose into effect.

Boca Mill Company vs. Curry, 154 Cal. 326.

As a general rule, the exception of a particular thing from the purview of the general expressions of a statute indicates that in the opinion of the law-making body the thing excepted would have been included within the general clause if the exception had not been made.

Tognazzini vs. Jordan, 165 Cal. 19.

It is a cardinal rule of statutory construction, that the language of a statute should be so interpreted as to make it compatible with common sense and the dictates of justice. Its construction must be reasonable, and not tend to palpable injustice, contradiction, or absurdity. Justice is the aim of all legislation.

Madary vs. City of Fresno, 20 Cal. App. 91.

Provisions in a constitution in the nature of direct legislation may form a part of the law of a state, as distinguished from other provisions of the constitution dealing with the frame of and declaring general principles of the republican form of government.

Los Angeles Gas and Electric Company vs. County of Los Angeles, 21 Cal. App. 517.

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Parol evidence is not admissible to vary or affect the written record of an assessment.

Spring Valley Water Company vs. County of Alameda, 24 Cal. App. 278; citing *Allen vs. McKay Company*, 139 Cal. 94; *Savings and Loan Society vs. San Francisco*, 146 Cal. 680.

De facto means in law, as well as elsewhere, of fact; in deed; in point of fact; actually; really.

Jaques vs. Board of Supervisors of Yuba County, 24 Cal. App. 381.

Courts take judicial notice of the general law under which reclamation districts may be organized.

Jaques vs. Board of Supervisors of Yuba County, 24 Cal. App. 381.

In computing the time constituting the period embraced within the statute of limitations, the day of the maturity of the obligation sued upon should be excluded.

First National Bank of Long Beach vs. Ziegler, 24 Cal. App. 503.

While it is a general rule that one may maintain ejectment against either an individual or corporation, who has without right entered upon his land, this rule is subject to some exceptions.

Gurnsey vs. Northern California Power Company, 160 Cal. 699.

The covenant against encumbrances implied, is not limited to such encumbrances as are specifically mentioned in section 1114 of the Civil Code, declaring that "the term 'encumbrance' includes taxes, assessments, and all liens upon real property."

Fraser vs. Bentel, 161 Cal. 390.

If a statute or a section of a statute is re-enacted, it is totally inconsistent with the idea that the old statute or section still remains in force or has vitality for any purpose whatever. The re-enactment creates a new rule of action and even if there was not the slightest difference in the phraseology, the latter alone can be referred to as the law, and the former stands to all intents and purposes as if absolutely and expressly repealed.

Buck vs. Canty, 162 Cal. 226; citing *Billings vs. Harvey*, 6 Cal. 381; *Bensley vs. Ellis*, 39 Cal. 309; *Huffman vs. Hall*, 102 Cal. 26.

Under subdivision 4 of section 1182 of the Civil Code, a notary public of a sister state is authorized to take acknowledgments of deeds conveying lands within this state, and his certificate of acknowledgment, if in the form required by our statutes, is sufficient, without the certificate from the clerk of a court of record of that state provided for by section 1189 of that code. The clerk's certificate is required only in cases where the notary's certificate of acknowledgment does not show an acknowledgment which would be good under our own statutes.

Holland vs. Hotchkiss, 162 Cal. 366.

In this state, the same presumption exists in favor of the acts of the superior court done in the exercise of its probate jurisdiction, as exists in favor of its acts done in ordinary litigation between parties.

Johnson vs. Canty, 162 Cal. 391.

The general rule is, with the exception of statutes relating to usury, that if a contract is void by the law in force at the time it is made, the subsequent repeal of the law will not validate the contract.

Wilcox vs. Edwards et al., 162 Cal. 455.

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The first step in the application and interpretation of an amendment to a constitution or statute is to consider the conditions existing prior to its adoption, so as to ascertain its objects and purposes.

Matter of the Application of Russell, 163 Cal. 668.

It is an established principle of construction, applicable to constitutions as well as statutes, that grants thereby made to private persons or public service corporations of rights belonging to the state or to the public are to be construed most strongly in favor of the public.

Matter of the Application of Russell, 163 Cal. 668.

A writ of mandate will not issue to compel the performance of an act that will be wholly void, and of no possible benefit to the petitioner.

San Diego and Arizona Railway Company vs. State Board of Equalization, 164 Cal. 41.

A finding that the allegations of fact in a complaint are true, is not finding that any conclusions of law therein are true.

Postal Telegraph-Cable Company vs. City of Los Angeles, 164 Cal. 156.

The ruling of an executive department of the United States government can not stand superior to the construction of a federal statute by a federal court.

Deseret Water, Oil and Irrigation Company vs. The State of California, 167 Cal. 147.

No person or corporation can exercise the power of eminent domain except by a grant from the state.

San Joaquin and Kings River Canal and Irrigation Company vs. James J. Stevenson, 164 Cal. 221.

Where a statute "is fairly susceptible of two constructions, one leading inevitably to mischief or absurdity, and the other consisting of sound sense and wise policy, the former should be rejected and the latter adopted." So also, "a construction should not be given to a statute, if it can be avoided, which will lead to absurd results, or to a conclusion plainly not contemplated by the legislature."

San Joaquin and Kings River Canal and Irrigation Company vs. James J. Stevenson, 164 Cal. 221; citing *In re Mitchell*, 120 Cal. 386; *Merced Bank vs. Casaccia*, 103 Cal. 645.

Statutes declaring forfeitures are not to be extended beyond their direct meaning by implication, unless such implication is imperatively necessary by reason of the subject matter or terms of the statutes.

Northwestern Pacific Railroad Company vs. Lambert, 166 Cal. 749;
Northwestern Pacific Railroad Company vs. Snider, 166 Cal. 781.

It is a well-settled rule of statutory construction that a general provision of the law must be controlled by one that is special.

Estate of Hellier, 169 Cal. 77.

An act general in its character will not repeal a special act, even though the former contains language which seems to cover the same ground as that included within the special law, unless it reasonably appears that the legislature clearly intended by the general act to nullify the provisions of the special statute inconsistent therewith.

Pears vs. Chambers, 28 Cal. App. 584.

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When a word or phrase has been given a particular scope or meaning in one part or portion of a law, it is to be given the same scope and meaning in other parts or portions of the law and particularly of the same section thereof.

Ransome-Crummey Company vs. Woodhams, 29 Cal. App. 356.

Whenever a constitutional provision is plain and unambiguous and no two meanings can be placed on the words employed, it is mandatory, and courts are bound to obey it.

City and County of San Francisco vs. McGovern et al., 28 Cal. App. 491.

The constitution of a state derives its force and authority from the vote of the people adopting it, and for that reason it is a general rule that in construing the provisions of a constitution the words employed therein shall be given the meaning which they bear in ordinary use among the people.

City and County of San Francisco vs. McGovern et al., 28 Cal. App. 491.

Repeal of statutes by implication are not favored. A later act, containing no repealing clause, does not repeal a prior act except so far as the two are clearly inconsistent, or unless it is manifest that the latter act was intended as a substitute for the former in all respects and to cover the entire subject matter to which both relate. In other words, the language of repeal, to be effective, must be of unmistakable meaning.

Matter of Petition of Johnson, 167 Cal. 142.

In speaking of any act provided by "law" to be performed, section 11 of the Civil Code, in so far as it refers to "law," means such an act as is required to be performed within a given time by some statutory provision or rule of law.

Cheney vs. Canfield et al., 158 Cal. 342.

Water, in its natural state, is part of the land. Like any other part thereof, it may become personal property by being severed from the realty, but not until then. When it is sold for domestic use and delivered by means of pipes to the premises in the usual manner, the pipes themselves are fixtures and part of the realty, and this severance takes place when the water is taken from the pipes by the consumer. In the case of water for irrigation, delivered in ditches or pipes, the severance does not take place at all. The water, by that use of it, permeates the soil and remains a part of the realty. The water, therefore, of an irrigation company, stored in its reservoir, is real property, the right to the use of which may become appurtenant to the land.

Copeland vs. Fairview Land and Water Company, 165 Cal. 148.

A contract purporting to transfer property to a fictitious person, or to one who is dead at the time, or to a corporation having no legal existence, passes no title at all. The title to the property attempted to be transferred remains in the transferrer.

Copeland vs. Fairview Land and Water Company, 165 Cal. 148.

Words used in a conveyance are to be given their ordinary and popular meaning, unless they are used in a special or technical sense, or the context shows that they are used in a different sense.

Wood vs. Mandrilla, 167 Cal. 607.

The rule as to the practical construction of a deed applies only when the language on the face of the instrument is doubtful, uncertain, or ambiguous.

Wood vs. Mandrilla, 167 Cal. 607.

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In the construction of any written instrument, whether constitution, statute, or contract, the most important duty of the court is to discover the true meaning of the instrument. Its endeavor is directed first to attaining an understanding of the purpose and object of the writing, and next to the giving to that purpose and object the fullest effect compatible with the meaning of the language through which that purpose and object find expression. Words, phrases, and sentences therefore are construed in contemplation of these fundamental purposes and objects, and when any doubt of their precise meaning is found to exist, aid in arriving at that meaning is drawn from the general rules and principles governing the construction of such doubtful language.

Perry vs. Gross, 172 Cal. 468.

While it is true and repeals by implication are not favored, whenever it becomes apparent that a later statute is revisory of the matter of an earlier statute and is designated as a substitute for it, the later statute will prevail and the earlier will be held to have been superseded even though there be found no inconsistencies or repugnances between the two. It is not so much a repeal by implication as it is that the legislature having made a new and complete expression of its will upon the subject this last expression must prevail, and whatever is excluded therefrom must be ignored.

Harris vs. Cooley, 171 Cal. 144.

In construing a deed every provision, clause, and word shall be taken in consideration in ascertaining the meaning of the grantor, whether words of grant, of description, or words of qualification, restraint, exception or explanation, and every word shall be presumed to have such force and effect as it can have.

East San Mateo Land Company vs. Southern Pacific Railroad Company, 30 Cal. App. 223.

Deeds are to be construed like any other contracts, and the intent of the parties arrived at by a consideration of the whole instrument and not of detached clauses.

Whitcomb vs. Worthing, 30 Cal. App. 629.

It is a rule of statutory construction that public rights will not be treated as relinquished or conveyed away by inference or legal construction. In pursuance of this rule statutes permitting the state to be sued are held in derogation of its sovereignty and will be strictly construed.

Westinghouse Electric Company vs. Chambers, 169 Cal. 131.

LXIX. Corporations. Municipal, Public, Private; Classification.

Every county in the state is a quasi-municipal corporation, but the provisions of the constitution of 1849 permitting corporations "for municipal purposes" to be created by special act, refers only to corporations for governmental and police purposes, and not to private corporations of any character or for any purpose.

City and County of San Francisco vs. Spring Valley Water Works, 48 Cal. 493, 523.

A levee district is a public corporation within the meaning of the Civil Code and text writers.

Dean vs. Davis, 51 Cal. 406; citing *Hagar vs. Supervisors, Yolo County*, 47 Cal. 233.

To constitute a public corporation it is not essential that it shall exercise *all* the functions of government within the prescribed district. School districts and road districts may be, and often are, public corporations.

Dean vs. Davis, 51 Cal. 406, 411.

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A reclamation district is a public corporation for municipal purposes.

People vs. Reclamation District No. 108, 53 Cal. 346; citing *Dean vs. Davis*, 51 Cal. 409. See, also, *Reclamation District No. 765 vs. McPhee*, 13 Cal. App. 382.

It must be considered as settled in this state that reclamation districts are public corporations.

People vs. Williams, 56 Cal. 647; citing *Dean vs. Davis*, 51 Cal. 409; *People vs. Reclamation District*, 53 Cal. 346.

A swamp land district, organized by the board of supervisors, is a public corporation.

Hoke vs. Perdue, 62 Cal. 545; citing *Dean vs. Davis*, 51 Cal. 406.

A swamp land reclamation district is a public corporation for municipal purposes.

People vs. LaRue, 67 Cal. 526; citing *Dean vs. Davis*, 51 Cal. 409.

The irrigation districts provided for by law are quasi-public corporations.

Turlock Irrigation District vs. Williams, 76 Cal. 360; citing *Hagar vs. Supervisors*, 47 Cal. 223; *Dean vs. Davis*, 51 Cal. 406; *People vs. Williams*, 56 Cal. 647; *People vs. LaRue*, 67 Cal. 526; *Reclamation District vs. Hagar*, 66 Cal. 54.

Irrigation districts are public corporations to the same extent as reclamation districts, and it is settled that reclamation districts are public corporations, and we think irrigation districts must be held to be so.

Central Irrigation Dist. vs. DeLappe, 79 Cal. 351; citing *Dean vs. Davis*, 51 Cal. 410; *People vs. Reclamation District*, 53 Cal. 348; *People vs. Williams*, 56 Cal. 647; *Hoke vs. Perdue*, 62 Cal. 546; *People vs. LaRue*, 67 Cal. 528.

Counties are not municipal corporations within the meaning of section 6, article XI of the constitution, but are political corporations, so far as they are to be regarded as corporations at all.

People, etc. vs. County of Orange, 81 Cal. 489; citing *People vs. Sacramento County*, 45 Cal. 695.

There can no longer be any question that the "Wright Act" (Stats. 1887, p. 29), providing for the organization of irrigation districts, is constitutional, and the districts organized under its provisions are public corporations.

Crall vs. Board of Directors, etc., 87 Cal. 140; citing *Turlock Irr. Dist. vs. Williams*, 76 Cal. 360; *Central Irr. Dist. vs. DeLappe*, 79 Cal. 351.

The municipal corporations which may be created under the constitution are not limited to cities and towns; but the legislature may by general laws classify and provide for as many species of municipal corporations as, in its judgment, are demanded by the welfare of the state, and commit to each class such powers only as are peculiarly appropriate thereto.

In re Madera Irr. Dist., 92 Cal. 296.

An irrigation district organized under the "Wright Act" becomes a public corporation and its officers become public officers of the state.

In re Madera Irr. Dist., 92 Cal. 296.

A school district when organized as provided by the Political Code is a public corporation of quasi-municipal character.

Hughes vs. Ewing, 93 Cal. 414.

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Although the legislature can not directly impose taxes upon counties or other public corporations, it has the authority to vest the power of taxation in them by general laws, and such corporations have no power to impose taxes other than that granted by the legislature, and its exercises must be within the limits and in the manner so conferred.

Hughes vs. Ewing, 93 Cal. 414.

A reclamation district is a public corporation, which can be created not only by the means and in the manner provided by the general law, but also by special act or implication.

Reclamation District No. 124 vs. Gray, 95 Cal. 601; citing *People vs. Reclamation District*, 53 Cal. 348.

A reclamation district is a public corporation for municipal purposes.

Swamp Land District No. 150 vs. Silver, 98 Cal. 51; citing *People vs. Reclamation District*, 53 Cal. 346. See, also, *Reclamation District No. 765 vs. McPhee*, 13 Cal. App. 382.

An irrigation district organized under the act of March 7, 1887, is a public corporation.

People vs. Selma Irrigation Dist. 98 Cal. 206; citing *Turlock Irr. Dist. vs. Williams*, 76 Cal. 360; *Central Irr. Dist. vs. DeLappe*, 79 Cal. 351; *Crall vs. Poso Dist.*, 87 Cal. 140; *People vs. Turnbull*, 93 Cal. 630; *In re Madera Irr. Dist.*, 92 Cal. 296.

School districts have been called public corporations and quasi-municipal corporations, but they have generally been considered a part of the county organization.

McCabe vs. Carpenter, 102 Cal. 469; citing *Hughes vs. Ewing*, 93 Cal. 414.

An irrigation district is a public corporation, formed under a general law for the promotion of the public welfare.

Quint vs. Hoffman, 103 Cal. 506; citing *People vs. Selma Irr. Dist.*, 98 Cal. 206. See, also, *Reclamation District No. 765 vs. McPhee*, 13 Cal. App. 382.

Irrigation corporations organized under the "Wright Act," being public corporations, it is immaterial whether they be corporations *de jure* or *de facto*, where the validity of an assessment levied by such corporation is the subject of litigation; the validity of such assessment does in no way rest upon the *de jure* character of the corporation. This principle must be settled law in this state.

Quint vs. Hoffman, 103 Cal. 506; citing *Dean vs. Davis*, 51 Cal. 411; *Reclamation District vs. Gray*, 95 Cal. 601; *Swamp Land District No. 150 vs. Silver*, 98 Cal. 53.

A corporation organized under the provisions of the Political Code, for the purpose of reclaiming swamp and overflowed land, is quasi-public.

Reclamation District No. 542 vs. Turner, 104 Cal. 334; citing *Quint vs. Hoffman*, 103 Cal. 506.

Cities and consolidated cities and counties are both municipal corporations within the meaning of the constitution.

Denman vs. Broderick, 111 Cal. 96; citing *Demond vs. Dunn*, 55 Cal. 242.

The reclamation districts marked out under the act of 1861 were not public corporations, and had no more resemblance to them than benefited districts assessed for local improvements, being without any autonomy, and subject to the control of state officers; if they can be viewed as quasi-corporations, they were without local or municipal government, and were merely special organizations formed to

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perform certain work which the state required or permitted to be done, and were public agencies which would cease to exist when the policy of the state was changed so that they were no longer required, or when there was no further function for them to perform, and were terminated by the repeal of the act of 1861.

People vs. Reclamation District No. 551, 117 Cal. 114.

There is a difference between an irrigation district under the "Wright Act" and the reclamation districts. These latter districts are not municipal corporations as that term is used in the constitution.

People vs. Reclamation District No. 551, 117 Cal. 114.

Reclamation districts organized under the provisions of the Political Code, are public agencies, and, if considered as corporations, have only such powers and liabilities as are prescribed by the law which creates them.

Hensley vs. Reclamation District No. 556, 121 Cal. 96; citing *People vs. Reclamation District*, 117 Cal. 114.

Sanitary districts, though public corporations, are not organized under the municipal incorporation act. It is an inferior corporation to that of a city which is capable of exercising the same and other functions.

People vs. City of Oakland, 123 Cal. 598.

An irrigation district, though a quasi-public corporation, does not represent the interests of the people of the state, and is not clothed with sovereign power.

People vs. Jeffords, 126 Cal. 296.

An irrigation district is a public corporation, and its officers are public officers.

Perry vs. Otay Irrigation District, 127 Cal. 565; citing *In re Madera Irr. Dist.*, 92 Cal. 321; *People vs. Selma Irr. Dist.*, 98 Cal. 208; *Quint vs. Hoffman*, 103 Cal. 506.

This court (the supreme) has repeatedly held that corporations of the character of defendant (irrigation district) are quasi-public corporations.

People vs. Linda Vista Irrigation District, 128 Cal. 477.

Sanitary districts, like irrigation and reclamation districts are public corporations, not municipal; and the legislature has no power to graft upon them a subject foreign to the purposes of the act creating them, and which falls within the police power possessed by municipalities organized for governmental purposes. The legislature can not clothe a public corporation not municipal with the local governmental powers conferred by the constitution upon counties, cities, towns and townships.

In re Werner, 129 Cal. 567;

Guptill vs. Kelsey, 6 Cal. App. 35.

School districts and high school districts are public corporations, or quasi-municipalities.

Board of Education of Woodland vs. Board of Trustees, etc., 129 Cal. 599.

Though the legislature has no power under the constitution to pass any special act creating or recognizing a municipal corporation, a levee district is not a "municipal corporation" within its meaning; but if it be a corporation, it belongs to a class by itself, the creation, organization, and control of which is not limited by the constitution.

People vs. Levee District No. 6 of Sutter County, 131 Cal. 30.

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But is Levee District No. 6 a corporation for municipal purposes within the meaning of the constitution? Expressions will be found in the cases where such organizations have been designated "corporations for municipal purposes," or "corporations for public purposes," or "public corporations," but these were convenient phrases of designation and description, rather than judicial declarations as to the nature and character of these agencies. The question propounded is conclusively answered by *People vs. Reclamation District No. 551*, 117 Cal. 114. It is there held that a reclamation district, conceding it to be a corporation, is not a corporation for municipal purposes within the meaning of the constitution. But as such levee districts, or reclamation districts, are distinctly not private corporations, it must follow that, if they be corporations, they are corporations in a class by themselves.

People vs. Levee District No. 6 of Sutter County, 131 Cal. 30.

As to Levee District No 1 of Sutter County it may at once be said, as has been frequently decided, that these district agencies and mandatories of the state are not municipal corporations.

Southern Pacific Company vs. Levee District No. 1 of Sutter County, 172 Cal. 345; citing *People vs. Reclamation Dist. No. 551*, 117 Cal. 114; *Hensley vs. Reclamation Dist. No. 556*, 121 Cal. 96; *People vs. Levee Dist. No. 6*, 131 Cal. 30; *Reclamation Dist. No. 551 vs. Sacramento County*, 134 Cal. 477; *People vs. Sacramento Drainage Dist.*, 155 Cal. 373; *Reclamation Dist. vs. Birks*, 159 Cal. 237.

A reclamation district is a public agency of the state; and property acquired thereby, which is indispensable to the execution of its objects, is public property of the state, within the meaning of the constitution, and is exempt from state and county taxes as such.

Reclamation District No. 551 vs. County of Sacramento, 134 Cal. 477; citing *People vs. Reclamation District No. 551*, 117 Cal. 114; *Hensley vs. Reclamation District No. 556*, 121 Cal. 96.

A school district is a public corporation which may sue or be sued in its own name. A road district is not a political entity. It can neither sue nor be sued.

County of San Bernardino vs. Southern Pacific Railroad Company, 137 Cal. 659.

Section 13 of article XI of the constitution must (with section 12 of the same article) be construed as applying equally to public or municipal corporations, such as irrigation districts, as to ordinary municipalities or cities. The term "municipal," as commonly used, is approximately applied to all corporations exercising governmental functions, either general or special. Irrigation districts with respect to their public functions are to be classed with public corporations; but with regard to the private rights of the individual landowners, they are to be classed as private corporations.

Merchants' National Bank of San Diego vs. Escondido Irrigation District, 144 Cal. 329; citing *Board of Education vs. Board of Trustees*, 129 Cal. 604; *Hughes vs. Ewing*, 93 Cal. 417; *Irrigation District vs. DeLappe*, 79 Cal. 354; *In re Madera Irr. Dist.*, 92 Cal. 308.

There is considerable discussion in the briefs upon the question whether a reclamation district is or is not a corporation. We do not think it necessary to decide this question. If it is a corporation, it is necessarily a quasi-public corporation, similar to a county or school district, and therefore it could not be sued until

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such time as an action against it was authorized by law. The same rule would apply if it should be declared to be a public agency of the state.

San Francisco Savings Union vs. Reclamation District No. 124, 144 Cal. 639; citing *People vs. Reclamation District*, 117 Cal. 114; *Whittaker vs. County of Tuolumne*, 96 Cal. 100; *Skelly vs. School District*, 103 Cal. 652; *Colusa County vs. Glenn County*, 117 Cal. 434; *Gilman vs. Contra Costa County*, 8 Cal. 57; *Hensley vs. Reclamation District*, 121 Cal. 96.

An irrigation district, organized under the act of March 7, 1887, generally known as the "Wright Act," and the "Bridgeford Act" amendatory thereof, is a public corporation.

Tulare Irrigation District vs. Collins, 154 Cal. 440.

In substance an irrigation district is defined as a municipal corporation in *Hewell vs. Hogan*, 3 Cal. App. 248; citing *Bates vs. Gregory*, 89 Cal. 398; *Underhill vs. Trustees*, 17 Cal. 178; *Barnes vs. Glide*, 117 Cal. 8.

The argument is that appellant (the Modesto Irrigation District) is a public municipal corporation, and its officers are public officers.

Healey & Tibbits vs. Anglo-California Bank, 5 Cal. App. 278; citing *In re Madera Irr. Dist.*, 92 Cal. 297.

The legislature of 1891 passed a law embracing a scheme for the establishment of sanitary districts, * * *. Such corporations have no power, of course, except such as the legislature has legitimately clothed them with. While they are public corporations they are not municipal corporations.

Guptill vs. Kelsey, 6 Cal. App. 35; citing *In re Werner*, 129 Cal. 567.

That the Sacramento drainage district, if it be considered a corporation at all, is not a corporation organized for municipal purposes within the contemplation of section 6 of article XI of the constitution, must be taken as well settled.

People vs. Sacramento Drainage District, 155 Cal. 373; citing *People vs. Reclamation District*, 117 Cal. 114; *People vs. Levee District*, 131 Cal. 30; *Reclamation District vs. Sacramento County*, 134 Cal. 477.

Reclamation districts do not belong to any class of corporations defined by section 284 of the Civil Code, nor do they come within the purview of the prohibition of section 1 of article XII of the constitution forbidding the creation of corporations by special act; nor are they municipal corporations within the provisions of section 6 of article XI of the constitution.

Reclamation districts are governmental agencies which may be formed and organized by special act; and the general power of the legislature for their creation, organization and control is not limited by the constitution of the state. They are formed to carry out a specific purpose, and the public agency ceases with the accomplishment of that purpose.

Reclamation District No. 70 vs. Sherman, 11 Cal. App. 399; citing *People vs. Reclamation District No. 551*, 117 Cal. 121; *People vs. Levee District No. 6*, 131 Cal. 30; *Hensley vs. Reclamation District No. 556*, 121 Cal. 96; *Reclamation District No. 551 vs. Sacramento County*, 134 Cal. 478; *People vs. Sacramento Drainage District*, 155 Cal. 373; distinguishing *Dean vs. Davis*, 51 Cal. 410; *People vs. Reclamation District No. 108*, 53 Cal. 348; *People vs. Williams*, 56 Cal. 647; *People vs. LaRue*, 67 Cal. 526; *Irrigation District vs. DeLappe*, 79 Cal. 353; *Angus vs. Browning*, 130 Cal. 503.

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School districts in the state are public quasi-municipal corporations, and subject to such constitutional limitations as may exist. The power of the legislature over them is plenary. It may divide, change, or abolish them at pleasure.

Pass School District of Los Angeles County vs. Hollywood City School District, 156 Cal. 416; citing *Hughes vs. Ewing*, 93 Cal. 414; *Kennedy vs. Miller*, 97 Cal. 429; *Bay View School District vs. Linscott*, 99 Cal. 27.

It may be conceded that sanitary districts are public corporations, though not designated as corporations by the statute, and that all their powers, duties and privileges are such as are incident to municipal corporations formed under the municipal government act, or existed under freeholders' charters, though not possessing many important powers, duties and privileges of the latter.

People ex rel. Cuff vs. City of Oakland, 123 Cal. 598.

The class to which the act of 1889, entitled "An act to provide for laying out, opening, extending, widening, straightening or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities, and to condemn and acquire any and all land and property necessary and convenient for that purpose," (Stats. 1889, p. 70), applies, to wit: municipal corporations, is a well recognized class to which general legislation of the character mentioned in the title of the act may be addressed, and the subject of that legislation is one usually committed to such municipalities, either by charter or general laws, as matters of municipal concern, and a law which provides for all municipalities a system for opening and extending streets and kindred matters, such as are embraced in the title of the act, is uniform in its operation.

Clute vs. Turner, 157 Cal. 73; citing *People vs. Henshaw*, 76 Cal. 436; *Hellman vs. Shoulters*, 114 Cal. 136.

Under the provisions of the act of 1897 (Stats. 1897, p. 254), authorizing the organization and government of irrigation districts, it is not necessary that the levying of an assessment by the board of directors for the purposes of the district shall be by or in the form of a resolution. Now, under the provisions of said act, is it necessary that the assessment roll and delinquent list be certified by any person or officer of the irrigation district.

Corson vs. Crocker, 31 Cal. App. 626.

The legislature has the right, under the power of taxation, to confer upon municipalities the authority to require local improvements, such as the laying out or widening of streets, to be borne by those owning property in the vicinity of the improvement, and who are specially benefited by reason of it. Such exercise of the taxing power does not contravene the constitutional provision respecting the exercise of the power of eminent domain.

Clute vs. Turner, 157 Cal. 73; citing *Emery vs. San Francisco Gas Co.*, 28 Cal. 345; *Hagar vs. Supervisors of Yolo County*, 47 Cal. 222; *Hornung vs. McCarthy*, 126 Cal. 17; *Duncan vs. Ramish*, 142 Cal. 686.

It is the legal duty of every person liable for taxes to pay the same when due. There is no distinction in principle in this regard between ordinary taxes and local assessments for improvements under such statutes as street improvement act. The assessment it is true is one in favor of the contractor, but it is one laid by virtue of the power of the state to tax, and the contractor may properly be regarded as the agent of the state in the matter of enforcement of the tax against the assessed property. This obligation resting upon the property assessed to answer for this tax is as clear and positive as is the duty of a taxpayer to pay the ordinary tax, and for the enforcement of the payment of such tax costs and attorneys' fees are allowable.

Engebretsen vs. Gay, 158 Cal. 30.

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Where the landowners who are taxpayers in a reclamation district are given no opportunity to contest an assessment levied thereby before the commissioners or the board of supervisors, they may urge any objections to its validity in an action to enforce the same, or in an action brought by the reclamation district under section 3493½ of the Political Code, in which a method is provided by which all objections to the assessment may be conclusively determined after such notice and hearing as the property owners are of right entitled to.

Reclamation District No. 17 vs. Bonbini, 158 Cal. 197; citing *Reclamation District vs. Sels*, 117 Cal. 164; *Reclamation District vs. McCullah*, 124 Cal. 175.

There can not be at the same time, within the same territory, two distinct municipal corporations exercising the same powers, jurisdictions, and privileges.

Matter of Sanitary Board of the East Fruitvale Sanitary District, 158 Cal. 453.

Where one municipal corporation is annexed to another the annexing city takes over the functions of the annexed municipality, and the latter by virtue of the annexation is extinguished, and its property, powers, and duties are vested in the corporation of which it has become a part.

Matter of the Sanitary Board of the East Fruitvale Sanitary District, 158 Cal. 453.

Where by the general law of 1895 (Stats. 1895, p. 213), any city or municipal corporation, not of the first class, was authorized, by ordinance, to provide for the assessment and collection of its city taxes by the same methods employed by county officers, and by ordinance of the city of San Jose, it was so provided, all of its city taxes must thereafter be assessed and collected by the ordinary machinery employed for the assessment and collection of state and county taxes, including sales to the state, in case of delinquency for the city tax, as well as for the state and county taxes, and the passage of title to the state, in case of non-redemption thereof.

Griggs vs. Hartzoke, 13 Cal. App. 429.

Under section 6 of article XI of the constitution of this state, as amended in 1896, there are but two classes of municipal corporations exempt from control of the general law in municipal affairs, comprising those cities organized by special legislative charter prior to the adoption of the constitution of 1879, and cities operating under freeholders' charter under that constitution.

Dawson vs. Superior Court of the County of Kings, 13 Cal. App. 582.

The act of March 27, 1895, for the formation of protection districts does not involve double taxation. The tax is for the public improvement within a certain district of especial benefit to the lands therein, but incidently of benefit to the county at large. The landowners can not complain that part of the tax is assessed to the county; and the general scheme involves the same principle as is found in the reclamation and irrigation district legislation which has been upheld by the higher courts.

Barnes vs. Board of Supervisors of Colusa County, 13 Cal. App. 760.

The rule that a *de facto* corporation can not be questioned as to its validity by private individuals, but only in *quo warranto* at suit of the state, applies to a *de facto* protection district.

Barnes vs. Board of Supervisors of Colusa County, 13 Cal. App. 760; citing *Reclamation District vs. McPhee*, 13 Cal. App. 382; *Keech vs. Joplin*, 157 Cal. 1; *Martin vs. Deetz*, 102 Cal. 55.

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Reclamation districts belong to that class of civil organization denominated "public corporations." Under this classification a reclamation district is a public, as distinguished from a private, corporation. It acts as a state agency invested with certain limited powers, and restricted to the doing of a particular work, public in its nature. It is not a municipal corporation possessing in any degree general powers of government, but nevertheless, within the limits of the authority granted to it, it exercises public functions.

Metcalf vs. Merritt, 14 Cal. App. 244.

The defendant, Alta Irrigation District, is a public corporation, organized under what is commonly known as the "Wright Act."

McPherson vs. Alta Irrigation District, 14 Cal. App. 353.

A reclamation district is a public as distinguished from a private, corporation. It acts as a state agency invested with certain limited powers and restricted to the doing of a particular work, public in its nature, and the existence of public corporations can be called into question only by the power from which they derive their right to be.

Jaques vs. Board of Supervisors of Yuba County, 24 Cal. App. 381.

Reclamation districts are not, in strictness, corporations at all, but *quasi* corporations, or public agencies to carry out a specific purpose, the agency ceasing with the accomplishment of the purpose.

Reclamation District No. 70 vs. Birks, 159 Cal. 233; citing *People vs. Sacramento Drainage District*, 155 Cal. 373; *Pass School District vs. Hollywood*, 156 Cal. 416.

It is argued that a permanent road division under the statute is not a corporate entity, has no corporate existence, and can not, therefore, issue bonds. But the answer to this is that it does not issue bonds. The agency for the bond issue is the board of supervisors, and the tax for the payment of the bonds is imposed upon the property of the division.

Potter vs. County of Santa Barbara, 160 Cal. 349; citing *People vs. Reclamation District*, 117 Cal. 121; *In re Madera Irrigation District*, 92 Cal. 308.

School districts are quasi-municipal corporations of the most limited power known to the law. Their trustees have special powers and can not exceed the limit.

Pasadena School District vs. City of Pasadena, 166 Cal. 7.

The existence of a *de facto* high school district can not be collaterally attacked.

Wood vs. County of Calaveras, 164 Cal. 398.

A reclamation district is a state agency and as the legislature has the power to determine how assessments shall be payable, the district must accept payment as commanded by the legislature. Long ago it was settled in California that in levee districts (which for purposes of taxation are exactly similar to reclamation districts) the tax collector must accept warrants of the district in payment of taxes under a statute making such warrants legal tender for that purpose, notwithstanding another section of the same statute providing that all taxes levied by virtue of the act should be paid in gold or silver coin. The statute was interpreted to mean that the taxes were payable either in warrants or money, but that when paid with the latter a particular kind of money should be used.

Hershey vs. Reclamation District No. 730, 162 Cal. 401; citing *Prescott vs. McNamara*, 73 Cal. 236.

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A reclamation district has neither the right nor the power to collect a delinquent assessment by an ordinary action for the recovery of a personal judgment for money.

Atchison, Topeka and Santa Fe Railway vs. Reclamation District No. 404,
173 Cal. 91.

Under the present provisions of the state constitution, a municipality may be included within the boundaries of an irrigation district, and land within the territory of said municipality assessed for district purposes.

La Mesa Homes Company vs. La Mesa Lemon Grove and Spring Valley Irrigation District, 173 Cal. 121.

The word "town" means, in general, any large collection of houses and buildings, public and private, constituting a distinct place with a name and not incorporated as a city. There is no substantial difference between an unincorporated town and a village except that perhaps the latter is usually understood to be smaller than a town.

The People vs. Van Nuys Lighting District, etc., 173 Cal. 792.

The public body known as the Sacramento and San Joaquin Drainage District, created for the purpose of controlling the flood water of the Sacramento River and its tributaries, is a corporation, although not a private or municipal corporation, but nevertheless one which the legislature has the power to create and control. Its principal place of business, and place of residence, is Sacramento County.

Gallup vs. Sacramento and San Joaquin Drainage District, 171 Cal. 71.

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"Corporations possess no powers except such as are specifically granted.

Hayes vs. Hogan, 5 Cal. 241.

The copying by one assessing officer of the valuations made by another assessing officer is not a valuation made by the first officer.

People vs. Hastings, 29 Cal. 449.

A charge imposed on all property of a district, to be used in constructing levees to protect the district from overflow, is a tax and not an assessment.

People vs. Whyler, 41 Cal. 351.

The property of a municipal corporation is not liable to taxation for municipal purposes; nor can a municipal corporation tax its own property.

Low vs. Lewis, 46 Cal. 549; citing *Fall vs. Marysville,* 19 Cal. 391.

An assessment for the improvements of streets is a municipal tax.

Himmelman vs. Spangel, 39 Cal. 389; citing *Emery vs. San Francisco Gas Co.,* 28 Cal. 345; *Emery vs. Bradford,* 29 Cal. 75; *Nolan vs. Reese,* 32 Cal. 484; *Himmelman vs. Steiner,* 38 Cal. 175. See, also, *Hancock vs. Whittemore,* 50 Cal. 522.

A tax for local improvements levied upon the property within a district created by an act of the legislature is not an assessment within the meaning of that term as employed in article XI, section 13 of the constitution of 1849.

Smith vs. Farrelly, 52 Cal. 77; citing *People vs. Hastings,* 29 Cal. 449; *People vs. Sargent,* 44 Cal. 432; *Williams vs. Corcoran,* 46 Cal. 555; *People vs. Whyler,* 41 Cal. 351.

Under section 12 of article XI of the constitution, the whole subject of county and municipal taxes for local purposes is relegated to the corporate authorities

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thereof; and the legislature has no power to impose any tax whatever within those territories for local purposes.

City and County of San Francisco vs. Liverpool, etc., Insurance Company,
74 Cal. 113.

An assessment levied under the provisions of the "Wright Act" upon property within an irrigation district organized thereunder, although referable to the power of taxation, is distinct from a tax, and is not subject to the constitutional provisions respecting taxation, but may be levied upon real property within the district, without deducting from the value of such property any mortgages existing thereon.

Tregea vs. Owens, 94 Cal. 317; citing *In re Madera Irr. Dist.*, 92 Cal. 296.

It is the settled law of this state that a domestic trading corporation resides in the county where it has its principal place of business, and that a municipal corporation is a resident of the county wherein its territory lies and all its constituents reside.

Buck vs. City of Eureka, 97 Cal. 135; citing *Jenkins vs. California Stage Co.*, 22 Cal. 537; *Cohn vs. Central Pac. R. R. Co.*, 71 Cal. 488; overruling *California Southern R. R. Co. vs. Southern Pacific R. R. Co.*, 65 Cal. 394, and *Thomas vs. Placerville G. M. Co.*, 65 Cal. 600.

The residence of a corporation is within the state in which it is created.

Jameson vs. Simonds Saw Co., 2 Cal. App. 582.

A swamp land assessment of land to a party by name and to "unknown owners" is void.

Gwynn vs. Dierssen, 101 Cal. 563; citing *Himmelman vs. Steiner*, 38 Cal. 178; *City vs. Dunham*, 59 Cal. 608; *Klumpke vs. Baker*, 68 Cal. 561; *Jatunn vs. O'Brien*, 89 Cal. 61; *Grotendfend vs. Ultz*, 53 Cal. 666; *Brady vs. Dowden*, 59 Cal. 51; *Bosworth vs. Webster*, 64 Cal. 1.

An assessment by an irrigation district upon the pueblo lands of a city situate within the district, which are unoccupied and uncultivated lands, susceptible of cultivation by irrigation, and which would be benefited thereby, is not a tax within the meaning of section 1 of article XIII of the constitution, exempting property of municipal corporations from taxation, and such pueblo lands may be sold by the irrigation district for the unpaid assessments thereon.

City of San Diego vs. Linda Vista Irrigation District, 108 Cal. 189.

The exemption of municipal property from taxation relates to general county and state taxes, and has no reference to assessments for improvements made under special laws of a local character. There can be no implied exemption of municipal property from taxation or assessment which is not held or used for municipal purposes, or devoted to a specific public use.

City of San Diego vs. Linda Vista Irrigation District, 108 Cal. 189.

The funds of a school district raised by a special school tax levied by the board of supervisors are not subject to the control of the county, and no action will lie against the county under section 3819 of the Political Code to recover such taxes paid under protest, upon the ground of alleged illegality of the school tax.

Pacific Mutual Life Insurance Company vs. County of San Diego, 112 Cal. 314;

Elberg vs. County of San Luis Obispo, 112 Cal. 316.

Under section 30 of the irrigation act of 1887, a tax deed executed by the tax collector on an irrigation district for a delinquent tax levied by its board of directors is *prima facie* evidence of the validity of the assessment and levy, and of the regularity and official character of the proceedings for the sale, and of the deed, provided

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only that the deed recites the matters recited in the certificate of sale, and is duly acknowledged or proved.

Cooper vs. Miller, 113 Cal. 238.

There is no constitutional provision which requires the uniform operation of municipal laws.

Hellman vs. Shoulters, 114 Cal. 136.

An action to recover municipal taxes, and to enforce the lien thereof, is subject to the limitation of subdivision 1 of section 338 of the Code of Civil Procedure, respecting an action upon a liability created by statute, and is barred in three years after the right of action accrued.

City of San Diego vs. Higgins, 115 Cal. 170;

Clark vs. City of San Diego, 144 Cal. 361.

Under the "national bank act" it is provided that "nothing herein shall be construed to exempt the real property of (bank) associations from either *state, county, or municipal taxes*."

McHenry vs. Downer, 116 Cal. 20.

NOTE.—Does such classification of taxes include taxes and assessments for reclamation, irrigation, levee, or other local purposes?

The organization of a reclamation district results in putting a burden on property against the will of the owners, and the requirements of the law as to such a proceeding can not be evaded by calling it a corporation; and in an action to enforce an assessment levied by the district, if its organization is denied, the question is not whether the district has so acted as to become a corporation *de facto*, but whether there has been in fact a substantial compliance with the law.

Reclamation District No. 587 vs. Burger, 122 Cal. 442; citing *Lower Kings River District vs. Phillips*, 108 Cal. 306.

A municipal ordinance, passed under the authority of an act of the legislature, has the force and effect of a law of the state, and is to be construed as such, the same as if its terms had been incorporated in the statute.

City of San Luis Obispo vs. Fitzgerald, 126 Cal. 279; citing *Murphy vs. San Luis Obispo*, 119 Cal. 624.

As a general rule, the adoption in one statute, for the purpose of carrying its provisions into effect, of the provisions of another statute by reference thereto, has the same effect as if the provisions of the statute then in force were incorporated bodily in the later enactment. It does not include subsequent amendments or modifications of the statute referred to, unless a clear intent to do so is expressed, or is manifest from the adoption into a special act of the provisions of general laws; but in no case will any amendment or modification or repeal of the statute referred to be construed to subvert the purpose or effective operation of the adopting statute, unless there is a clear necessity for such construction.

Ramish vs. Hartwell, 126 Cal. 443; citing *Kirk vs. Rhodes*, 46 Cal. 403; *Spring Valley W. W. vs. San Francisco*, 22 Cal. 434; *People vs. Clunie*, 70 Cal. 504.

The amendment of March 28, 1895, to section 3771 of the Political Code, by which all property delinquent for state and county taxes is struck off and sold to the state is inapplicable and no part of the provisions of the act of February 27, 1893 (Stats. 1893, p. 33), relating to municipal bond taxation.

Ramish vs. Hartwell, 126 Cal. 443.

In an action to quiet title to city lots, a defense of the city setting up a claim for taxes assessed and levied more than three years prior to the commencement of

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the action, and demanding their payment as a condition of plaintiff's recovery, is barred by the statute of limitations.

Dranga vs. Rowe, 127 Cal. 506; citing *San Diego vs. Higgins*, 115 Cal. 170.

See, also, *Clark vs. City of San Diego*, 144 Cal. 361.

Where a municipal charter provided that the mode and manner of collecting municipal taxes should be the same as that of the collection of state and county taxes, section 3819 of the Political Code, making the payment of illegal taxes under protest involuntary and directing that they may be recovered back, though enacted subsequently to the charter, is applicable thereunder, especially where the municipality by valid ordinance has adopted its provisions; and illegal municipal taxes paid under protest in such municipality may be recovered back.

Hellman vs. City of Los Angeles 147 Cal. 653.

For the purposes of taxation in an irrigation district the definition of real and personal property in the general revenue and taxation laws of the state must prevail; and under sections 3617 and 3663 of the Political Code, telegraph lines can not be assessed as improvements on land, but must be assessed as personal property.

Western Union Telegraph Company vs. Modesto Irrigation District, 149 Cal. 662.

For the purpose of the revenue of an irrigation district it can only tax real property situated within the district; and poles, wires, and other appliances constituting a telegraph line passing through the district, belonging to a telegraph company, though situated upon the right of way of a railroad company, preserve the character of personal property, and, as such, can not be taxed by the irrigation district.

Western Union Telegraph Company vs. Modesto Irrigation District, 149 Cal. 662.

Proceedings to open and widen a street in the city of Los Angeles under the general law of March 6, 1889 (Stats. 1889, p. 70), instead of under the city charter, are void, and a deed thereunder executed by the superintendent of streets is a nullity.

Baird vs. Monroe, 150 Cal. 560; citing *Byrne vs. Drain*, 127 Cal. 663.

Under the freeholders' charter of the city of Los Angeles, it is a necessary prerequisite to the maintenance of an action against the city for the recovery of taxes paid under protest that a previous demand therefor, as provided in such charter, be presented to the city council. Conceding that section 3819 of the Political Code, relating to the recovery by suit of taxes paid under protest, although in terms limited to the matter of state and county taxes, is made applicable to the city of Los Angeles by its charter provisions, still it must be construed subject to the provisions of the charter requiring the presentation of claims and demands against the city.

Farmers' and Merchants' Bank of Los Angeles vs. City of Los Angeles, 151 Cal. 655.

NOTE.—This action involved the assessment of moneys belonging to the city and under deposit in a bank.

The making by a taxpayer of an application for the reduction of an assessment to the city council sitting as a board of equalization prior to the payment of the taxes under protest, is not the presentation of a demand for the repayment of such taxes within the meaning of the charter requirements. The city council had jurisdiction to allow a claim for taxes paid under protest if properly presented, although the board of equalization had several months before refused to reduce the assessment. The fact that a reduction of the assessment was refused does not

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conclusively establish that the city would not have allowed the claim, or render the presentation of a demand therefor unnecessary, on the ground that a demand would have been useless.

Farmers' and Merchants' Bank of Los Angeles vs. City of Los Angeles, 151 Cal. 655.

Where the assessment book of a municipal corporation clearly shows by the affidavits of the city assessor and city clerk contained therein that the book was in fact the assessment book of the city for the year 1904, the assessments therein are not invalidated by the erroneous recital printed on each double page of the book that it was the assessment book for the year 1904-1905.

City of Escondido vs. Wohlford, 153 Cal. 40.

A city ordinance establishing a system for the assessment levy, and collection of city taxes, and in terms providing that the provisions of the Political Code were adopted, as the law "for assessing, levying, and collecting city taxes," did not adopt as a part of that system, any section of the Political Code the subject-matter of which was covered by the general municipal corporation act applicable to such city.

City of Escondido vs. Wohlford, 153 Cal. 40.

Under the municipal corporation act (Stats. 1883, p. 24), and its amendments of 1891 and 1901, and sections 1576 and 1670 of the Political Code, the board of trustees of a city of the fifth class, the territory of which together with the adjoining territory outside of its limits constitutes a school district, has power to levy a school tax upon the lands of the school district lying outside the city.

Visalia Savings Bank vs. City of Visalia, 153 Cal. 206.

Subdivision 22 of section 1670 of the Political Code was not intended to repeal the provisions of the municipal corporation act conferring upon the municipality the power to levy taxes for all municipal purposes, of which the support and maintenance of the schools is a part.

Mooney vs. Board of Supervisors, Tulare County, 2 Cal. App. 65; citing *Board of Education vs. Board of Trustees*, 129 Cal. 600.

The change in time when taxes take their lien, from the first Monday in March to the first day of May, under a city ordinance, held to be valid, on a question for the refunding of moneys.

Wohlford vs. City of Escondido, 2 Cal. App. 429.

A municipal corporation of the sixth class, created under the municipal corporation act of 1883, had, under section 871 thereof, as it stood prior to 1905, the power to fix the time for the assessment, levy, and collection of city taxes, and could provide that the assessment thereof should be fixed according to the status of property at twelve o'clock m., of May 1st, instead of twelve o'clock m., of the first Monday of March; and the fact that said section 871 provides that the lien of city taxes shall relate to the first Monday in March is not inconsistent with the power given to fix the time for the assessment, levy, and collection of taxes.

City of Escondido vs. Escondido Lumber, etc., Co., 8 Cal. App. 435; affirming *City of Escondido vs. Wohlford*, 153 Cal. 40.

There is nothing in the constitution inconsistent with the municipal corporation act of 1883. Section 8 of article XIII thereof has no application to the assessment of property in municipal corporations for local purposes.

City of Escondido vs. Escondido Lumber, etc., Co., 8 Cal. App. 435.

The power of the legislature to charge the county tax collector with the duty of collecting taxes levied in and for the benefit of a sanitary district in any manner

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it may deem wise to prescribe, or to collect such taxes in the same manner as state and county taxes are collected, can not be questioned.

Guptill vs. Kelsey, 6 Cal. App. 35.

The general amendments to the revenue laws of 1895 and 1897, whereby all property delinquent was sold to the state and not to individuals, became also a part of the sanitary laws as enacted in 1891, and a deed to an individual for a sanitary tax, without giving the thirty days' notice required by law, is void.

Guptill vs. Kelsey, 6 Cal. App. 35.

It is a general rule, supported by unbroken authority in this state, that courts of record do not take judicial notice of municipal ordinances.

Mettcer vs. Smith, 156 Cal. 572; citing *Ex parte Davis*, 115 Cal. 447; *City of Tulare vs. Hevren*, 126 Cal. 229.

The residence of a domestic corporation is at its principal place of business; and when it is sued in a transitory action in a county other than its principal place of business it has the right, when it appears and demurs, to demand a change of the place of trial to the county where it has its principal place of business, if no other ground for retaining the action appears.

Krogh vs. Pacific Gateway and Development Co., 11 Cal. App. 237; citing *Cohn vs. Central Pacific R. R. Co.*, 71 Cal. 488; *Buck vs. City of Eureka*, 97 Cal. 135; *Trezevant vs. Strong Co.*, 102 Cal. 48.

It is well settled that the legality of reclamation districts and like quasi-public corporations or public agencies established for similar purposes can not, in a suit to enforce an assessment for the purpose of their creation and organization, be challenged; or, in other words, their legality can not be collaterally attacked.

Reclamation District No. 70 vs. Sherman, 11 Cal. App. 399; citing *Hoke vs. Perdue*, 62 Cal. 545; *Reclamation District vs. Gray*, 95 Cal. 601; *Swamp Land District vs. Silver*, 98 Cal. 51; *Quint vs. Hoffman*, 103 Cal. 506; *Reclamation District vs. Turner*, 104 Cal. 334.

The *situs* of shares of stock in a corporation, as to any authorized proceeding to subject the stock to the lawful claim of another, whether that claim be one of ownership of the property or of a right to specific enforcement of a contract relative to it, is within the state where the corporation resides. That state is ordinarily the state by or under the laws of which the corporation was created.

Wait vs. Kern River Mining, Milling and Developing Company, 157 Cal. 16.

Outside territory formerly belonging to a high school district with which it is connected, upon its inclusion within the boundaries of a city, becomes part of the school district of such city, and is thereby severed from the outside school district and high school district of which it formed a part, and can not be subjected to any further burdens of taxation for support of such high school district.

Frankish vs. Goodrich, 157 Cal. 613; citing *Hughes vs. Ewing*, 93 Cal. 414; *Bay View School District vs. Linscott*, 99 Cal. 26; *Kramm vs. Bogue*, 127 Cal. 122.

An objection to the sufficiency of the description of lands in the petition for the organization of the reclamation district is not tenable, where the description of a ranch by name refers to a map as an exhibit, which renders it sufficiently certain to sustain a deed thereof, and where the description of town lots therein refers to a map as an exhibit, from the scale of which can be calculated exactly the quantity of land contained in each lot. A substantial compliance with the statute is all that is required to render the petition for the formation of an irrigation district sufficient.

Metcalfe vs. Merritt, 14 Cal. App. 244.

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As to public corporations of any variety, the decisions are almost unvarying to the effect that their existence can not be called into question by any suitor, except the power from which they derive their right to be; and that an attack collaterally made, with a view to testing the regularity of their existence or organization, will not be permitted.

Metcalfe vs. Merritt, 14 Cal. App. 244; citing *Quint vs. Hoffman*, 103 Cal. 506; *Reclamation District No. 542 vs. Turner*, 104 Cal. 335.

Where a telegraph company organized under the laws of New York and protected by congressional legislation sought to condemn a right of way in this state, the question of its right to transact business in this state because not organized therein, as domestic corporations are, and whether it is prohibited from so doing by section 15 of article XII of the constitution, prohibiting such a corporation "to transact business in this state on more favorable conditions than are prescribed by law to similar corporations under the laws of this state," is in its nature collateral, and can not be raised in the condemnation proceeding.

Western Union Telegraph Company vs. Superior Court of Sacramento County, 15 Cal. App. 679.

The congress of the United States having expressly granted to any telegraph company organized under the laws of any state the rights to construct and maintain its lines of telegraph through and over any portion of the public domain of the United States, over and along any of the "post roads" of the United States, and having expressly declared all railroads to be "post roads," and having required acceptance of such rights to be filed with the postmaster general, which acceptance was filed by such New York Telegraph Company, the rights thus conferred upon such accepting party give paramount authority to assert the same in any state or territory in the United States.

Western Union Telegraph Company vs. Superior Court of Sacramento County, 15 Cal. App. 679.

Under the act of 1872 and the act of 1899 amendatory thereof, a foreign corporation doing business in this state which fails to file with the secretary of state its designation of some person residing in the county of its principal place of business upon whom process shall be served can not defend an action on the ground that it is barred by the statute of limitations.

Black vs. Vermont Marble Company, 1 Cal. App. 718.

Under the act of April 1, 1872 (Stats. 1872, p. 826) as amended by the act of March 17, 1899 (Stats. 1899, p. 111) the State of California does not purport to prohibit a foreign corporation from engaging in business before filing the designation therein named, or to affect the validity of any transaction it may enter into or any contract it may make. Neither does the provision that it shall not "maintain" any action in the courts of the state deny it the right at any time to "commence" an action for the protection of its property or the enforcements of its rights; and it is within its power at any time after the commencement of the action to comply with the statute and thereafter "maintain" such action. It is not to be supposed that the legislature, by taking away the right to defend an action, intended that the corporation should be without the protection of the law, or that its property might be confiscated through the forms of the law without any right to defend against the same.

Black vs. Vermont Marble Company, 1 Cal. App. 718; citing *California Savings and Loan Society vs. Harris*, 111 Cal. 133; *Ward Land and Stock Co. vs. Mapes*, 147 Cal. 747.

The residence of a corporation is within the state in which it is created, and so long as it confines the exercise of its corporate powers within that state, it is

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beyond the reach of the process of courts of other states. In order that those courts may acquire jurisdiction to render a personal judgment against a foreign corporation, otherwise than by its voluntary appearance, its presence in those states must be manifested by the transaction of its corporate business therein, or by such acts as will indicate the exercise therein of its corporate powers, at the time the process of the court is served upon it.

Jameson vs. Simonds Saw Company et al., 2 Cal. App. 582.

A foreign corporation organized and existing under the laws of another state is a resident of that state, and foreign to this state; and actions against foreign corporations may be brought and tried in any county of this state, in the absence of any statute conferring upon them a county residence.

Waechter vs. Atchison, Topeka and Santa Fe Railway Company, 10 Cal. App. 70.

The place of residence of corporations, foreign or domestic, is at the place where, by its articles of incorporation, it has its principal place of business.

Waechter vs. Atchison, Topeka and Santa Fe Railway Company, 10 Cal. App. 70.

The liability of a foreign corporation to be sued in this state upon its compliance with its laws, no more confers a county residence upon it than does the county which permits it to sue in our courts to enforce a contract or to redress a wrong.

Waechter vs. Atchison, Topeka and Santa Fe Railway Company, 10 Cal. App. 70.

The establishment of a principal place of business in this state by a foreign corporation doing business in this state, by compliance with section 408 of the Civil Code, does not make it thereby a domestic corporation.

Waechter vs. Atchison, Topeka and Santa Fe Railway Company, 10 Cal. App. 70.

Although it is required in section 411 of the Code of Civil Procedure that a foreign corporation must be "doing business" in this state, to justify service of summons upon it through its managing agent; and although the counter-affidavit on the motion to quash the service states that it was not doing business in this state at the time of service, yet such objection may be waived, and is waived, by failure of the corporation defendant to state the same as ground of its motion to quash the service, and to give notice thereof, as required by section 1010 of the Code of Civil Procedure.

Dickinson vs. Zubiate Mining Company, 11 Cal. App. 656; citing *Jameson vs. Simonds Saw Company*, 2 Cal. App. 584.

In an action by a foreign corporation, a complaint which states a cause of action is sufficient; and its failure to allege that it has complied with the provisions of the Civil Code, as to the filing of a certified copy of its articles of incorporation with the secretary of state, together with the designation of some one upon whom process might be served, did not go to the cause of action, and is not ground of demurrer.

Bernheim Distilling Company vs. Elmore, 12 Cal. App. 85.

Though the word "property," in itself considered, has a generic signification, including "land" and other property, yet, as those terms are employed in the act of 1903, for opening or widening of streets, they are clearly used as synonymous, and that act contemplates that "land" alone, without reference to the value of "improvements" thereon, shall be assessed within the district provided for the opening or widening of a street.

Los Angeles Pacific Company vs. Hubbard et al., 17 Cal. App. 646.

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A provision in the act of 1903 for assessing the "property" of any railroad or street railroad within said assessment district is to be construed in connection with the other provisions of said act, and is to be interpreted as showing the intention of the legislature to use the word "property" as applied to such railroad or street railroads in the limited sense, as having reference only to that species of property designated as "land," which is "the solid material of the earth."

Los Angeles Pacific Company vs. Hubbard et al., 17 Cal. App. 646.

A municipality has the right to assess all real property found within its limits for the purpose of maintaining the municipal revenues, and the county taxing officials have the right to levy upon the same property for county purposes.

Temescal Water Company vs. Niemann, 22 Cal. App. 174.

The superintendent of streets had no authority in assessing an electric "street railroad" within the limits of an assessment district, for the widening of a street, to assess the "ties, tracks, poles, rails, and switches" as such, which enter into the construction of the street railroad and are used in the operation thereof, and which are in the nature of "improvements" which are never assessable as such.

Los Angeles Pacific Company vs. Hubbard et al., 17 Cal. App. 646.

Under the act of 1903 for opening and widening of streets, there was properly included in the assessment of a street railroad its "franchise" whereby it was granted the right to construct, maintain and operate its railroad, along and over that portion of the street within the boundaries of the district, by which it acquired an interest in the soil of the street, consisting of the location of its road in the street, and the right to lay its rails therein, and attach them firmly to the soil, and to run its cars over them for profit, and to the exclusive use thereof for that purpose, which is an "interest in the land" and is "real estate."

Los Angeles Pacific Company vs. Hubbard et al., 17 Cal. App. 646; citing *Appeal of the North Beach and Mission Railroad Company*, 32 Cal. 499; *Stockton Gas and Electric Company vs. San Joaquin County*, 148 Cal. 313.

Under the drainage act (Stats. 1885, p. 204; 1891, p. 262; 1909, p. 25) the action of the board of equalization in adjusting an assessment is not conclusive upon the landowners, but is subject to review by the courts.

Payne vs. Ward, 23 Cal. App. 492; citing *Lower Kings River Reclamation District vs. Phillips*, 108 Cal. 306.

The failure of a foreign corporation doing business in this state to file a certified copy of its articles of incorporation in the office of the secretary of state, as required by sections 408 and 409 of the Civil Code, renders it subject to a fine, and deprives it of the right to maintain any action in any of the courts of this state, but does not prevent it from defending any such action brought against it.

Winston vs. Idaho Hardwood Company, 23 Cal. App. 211.

The failure to file a copy of its articles of incorporation, as required by sections 408 and 409 of the Civil Code, renders a foreign corporation subject to the penalties imposed by the provisions of section 410, but the denial of the right of such corporation to defend an action, as provided in section 406, attaches only when it fails to designate an agent in the state upon whom service may be made, and the duty of filing such designation arises only at the time of filing the copy of the articles of incorporation.

Winston vs. Idaho Hardwood Company, 23 Cal. App. 211.

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Under section 411 of the Code of Civil Procedure it is requisite, in order that a court may acquire jurisdiction over a foreign corporation, that the corporation shall be "doing business" within the state at the time summons is served.

Carpenter vs. Bradford, 23 Cal. App. 560; citing *Jameson vs. Simonds Saw Company*, 2 Cal. App. 586; *Herron Company vs. Westside Electric Company*, 18 Cal. App. 778.

Where the description of the boundary lines of an assessment district, as contained in the ordinance of intention, after a course has been traced to a point on the westerly line of Grand avenue, proceeds "thence easterly in a direct line to the most westerly corner of lot 10 of Feldhauser's subdivision of blocks 85 and 86, Ord's survey, as per map," etc., and it appears from such map that there are two lots number 10 in the subdivision in question, both located in an easterly direction from the point on Grand avenue referred to, the assessment is void because of the indefiniteness and uncertainty of the description, although both of such lots lie in an easterly direction from the point on Grand avenue.

Walker vs. City of Los Angeles, 23 Cal. App. 634.

A city, if not specially authorized by the legislature in clear and unambiguous language, is without power to levy an assessment on the right of way of a railroad company extending through the municipality for a portion of the cost of a combined bulkhead and sidewalk within the limits thereof, or to make any sale of such property to satisfy an assessment so attempted.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. Pillsbury, 23 Cal. App. 675; citing *Southern California Railway Company vs. Workman*, 146 Cal. 80; distinguishing *Los Angeles Pacific Company vs. Hubbard*, 17 Cal. App. 646; *Fox vs. Workman*, 155 Cal. 201.

If a sale of property being used for the purposes of which a railroad ordinarily uses its right of way is proposed in pursuance of such assessment, the railroad company is entitled to an injunction.

San Pedro, Los Angeles and Salt Lake Railroad Company vs. Pillsbury, 23 Cal. App. 675.

The identity of a corporation is not destroyed nor are its legal obligations obliterated by the mere fact of reincorporation under the same or a different name; and a transfer of the corporate assets from the old to the new corporation will, when warranted by the pleadings and proof, be considered, under the familiar principle applicable to fraudulent conveyances, as having been done to hinder, delay, and defraud the creditors of the old corporation.

Koch vs. Speedwell Motor Car Company, 24 Cal. App. 123.

The mere fact that separately created and existing corporations bear the same name and deal in the same commodities will not suffice, even if the officers and stockholders of each corporation are the same, to create a merger of corporate capacity, identity, and liability.

Koch vs. Speedwell Motor Car Company, 24 Cal. App. 123.

Foreign corporations are allowed to do business in this state by virtue of the comity between the states, and special legislation expressing the extent to which this comity is given, specifying the terms with which they must comply, and providing the method of proving corporate existence and for the service of process upon them is both appropriate and necessary, and is not objectionable so long as it does not permit them to do business under conditions more favorable than those imposed on domestic corporations. The conditions imposed by the act found in the statutes of 1871-72, page 826, as amended, statutes 1899, p. 111,

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are not more favorable than those required of other corporations, but are, if anything, less favorable.

Anglo-California Bank, Limited, vs. Field, 146 Cal. 644.

A corporation is recognized as *de facto* when a number of persons have organized and acted as a corporation; have conducted their affairs, to some extent at least, by the methods and through the offices usually employed by corporations; and have assumed the appearance, at least, of the counterfeit presentment of a legal, corporate body.

Jaques vs. Board of Supervisors of Yuba County, 24 Cal. App. 381.

The validity of the organization and legal existence of a reclamation district can not be questioned by private individuals on *certiorari* but only by the state on *quo warranto*.

Jaques vs. Board of Supervisors of Yuba County, 24 Cal. App. 381.

Under section 411 of the Code of Civil Procedure, in order that the court may get jurisdiction over a foreign corporation, it is requisite that such corporation shall be "doing business" within the state at the time the summons is served, and that the service shall be made upon its agent who is managing that business or upon its cashier or secretary.

Jameson vs. Simonds Saw Company et al., 2 Cal. App. 582.

Section 16 of article XII of the constitution, which provides for the place of trial of actions against corporations, relates exclusively to private corporations, and has no application to a suit against a public municipal corporation.

Buck vs. City of Eureka, 97 Cal. 135.

It is the settled law of this state that a domestic trading corporation resides in the county where it has its principal place of business; and a municipal corporation, though not capable of having a residence in the restricted sense of the word, occupies a position in regard to residence as favorable as an ordinary trading corporation.

Buck vs. City of Eureka, 97 Cal. 135.

The act of March 17, 1899, providing that when a foreign corporation doing business in this state fails to comply with the law requiring it to file with the secretary of state a writing designating some person as its agent upon whom process can be served, summons in civil action may be served upon the secretary of state, is constitutional and valid. Such foreign corporation is bound to know the existing law as to its right to do business, and that if it refuses to appoint an agent, service could be made upon the secretary of state.

Olander vs. Crystalline Mining Company, Limited, 149 Cal. 482; distinguishing *Keystone Driller Company vs. Superior Court*, 138 Cal. 738; *Willey vs. Benedict*, 145 Cal. 270.

A gas company having the right and franchise to lay pipes in the streets for the purpose of supplying illuminating gas to the inhabitants of a city under section 19 of article XI of the constitution, does not forfeit its franchise by the supplying of gas for cooking and heating as well as for lighting purposes which does not subject the streets to any additional burden.

The People vs. Los Angeles Independent Gas Company, 150 Cal. 557; citing *In re Johnston*, 137 Cal. 115; *Deninger vs. Recorder's Court*, 145 Cal. 629.

There being no statute in this state to the contrary, the effect of the dissolution of a corporation is to terminate its existence as a legal entity, and render it incapable of suing or being sued as a corporate body or in its corporate name. There is

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no one who can appear and act for it; and all actions against it are abated, and any judgment attempted to be given against it is void, as much so as if it had been rendered against a dead natural person.

Crossman vs. Vivienda Water Company, 150 Cal. 575;
Newhall vs. Western Zinc Mining Company, 164 Cal. 380;
Lowe vs. Superior Court, 165 Cal. 708;
Lowe vs. Los Angeles Suburban Gas Company, 165 Cal. 805;
Brandon vs. Umpqua Lumber and Timber Company, 166 Cal. 322.

The remedy of a creditor after dissolution of a corporation in this state is against the directors who continue such at the time of its dissolution and the stockholders.

Crossman vs. Vivienda Water Company, 150 Cal. 575.

A corporation, although organized under the laws of another state, is a "person" within the meaning of the fourteenth amendment of the constitution of the United States, providing that no state shall deprive any person of property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

American DeForest Wireless Telegraph Company vs. Superior Court of the City and County of San Francisco, 153 Cal. 533.

Section 410 of the Civil Code, providing that no foreign corporation doing business in this state, which fails to file copies of its articles of incorporation with the secretary of state, and with the county clerk of the county where its principal place of business is located and where it owns property, as required by section 408 of said code, "can maintain any suit or action in any of the courts of this state until it has complied with said section," does not forbid a foreign corporation which has failed to comply with such provisions from defending an action brought against it in the courts of this state. Notwithstanding the provisions of those sections, to prevent such a foreign corporation from defending any action brought against it, would be to deny it the equal protection of the laws and to deprive it of its property without due process of law.

American DeForest Wireless Telegraph Company vs. Superior Court of the City and County of San Francisco, 153 Cal. 533.

A corporation is purely a creature of the law and can exist only by permission of the state, and the legislative department of the state government is the only department empowered to form corporations, or authorize their formation, or prescribe or extend their term of existence, and, except in so far as it is limited by constitutional provision, the power of the legislature in this regard is absolute.

Boca Mill Company vs. Curry, 154 Cal. 326.

Where the articles of incorporation of a foreign corporation declare that it was the purpose of the corporation to do business in California, the stockholders are liable individually to the creditors of the corporation for debts incurred by the corporation in doing business in California, in accordance with the laws of that state on that subject.

Peck vs. Noee, 154 Cal. 351.

The state has the sole power to determine upon what conditions corporations may be created and exist within its borders, and under the power reserved in section 1 of article XII of the constitution of 1879, the legislature has the right to change the conditions upon which the privilege of being and acting as a corporation shall continue to exist, and every corporation accepts its charter subject to the exercise of such reserved power.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

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The phrase "to transact business," as used in section 15 of article XII of the state constitution, providing that no foreign corporation "shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state," is equivalent to the words "to do business."

General Conference of Free Baptists vs. Berkey, 156 Cal. 466.

Even if such a foreign corporation may come within the purview of that provision of the constitution by the doing of a single act, such act must be one of the ordinary business of the corporation, and not an act done in the exercise of a power merely incidental to the main purposes of its incorporation.

General Conference of Free Baptists vs. Berkey, 156 Cal. 466.

The single sale by such foreign corporation of land in this state is not the transaction of business by it, within the meaning of such provision of the constitution, and it is, therefore, not essential to the validity of such sale, that an application for leave to make it had been made to or granted by the superior court, in accordance with the requirements of section 598 of the Civil Code applicable to domestic corporations.

General Conference of Free Baptists vs. Berkey, 156 Cal. 466.

The *situs* of shares of stock in a corporation, as to any authorized proceeding to subject the stock to the lawful claim of another, is within the state where the corporation resides. That state is ordinarily the state by or under the laws of which the corporation was created.

Wait vs. Kern River Mining, Milling and Development Company, 157 Cal. 16.

A corporation, organized under the laws of a foreign state, for the exclusive purpose of doing business in California, where its entire property is situated and all its business transacted, will be deemed to be a resident of California, to an extent sufficient to bring it within the rule applicable to domestic corporations as to the *situs* of its stock. As to such a corporation, the fiction as to the *situs* of the corporation entity being in the state of its creation ought to yield in the interest of justice to the actual facts.

Wait vs. Kern River Mining, Milling and Development Company, 157 Cal. 16.

The material question in a judicial investigation in the fixing of domestic water rates as to the sufficiency of compensation relates to what is the present reasonable value of the property devoted to public use, and in determining such value no proper allowance could be made for any past depreciation nor for what is known as the good will of a going concern.

Contra Costa Water Company vs. City of Oakland, 159 Cal. 323.

The streets of the city of Los Angeles kept up and maintained as such are letter-carrier routes established in such city for the collection and delivery of mail matter, and consequently are post roads under section 3964 of the United States Revised Statutes.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106;

Western Union Telegraph Company vs. County of Los Angeles, 160 Cal. 124;
Postal Telegraph-Cable Company vs. County of Los Angeles, 160 Cal. 129.

The privilege conferred by the act of congress on July 24, 1866, on telegraph companies to construct, maintain and operate lines of telegraph over such post roads as are public streets or highways of a state, is subject to the right of the

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state to charge and receive compensation from the telegraph company for the use by it of so much of the street or highway as is exclusively devoted to its purposes.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106.

The term "public highways," includes streets in cities.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106.

The state, in its sovereign capacity, has the original right to control all public streets and highways, and except in so far as that control is relinquished to municipalities by the state, either by provision of the state constitution or by legislative act not inconsistent therewith, it remains with the state legislature to be exercised in any manner not prohibited by the state constitution.

Western Union Telegraph Company vs. Hopkins, 160 Cal. 106.

The act of February 13, 1911, if in conflict with the act of 1891 (Stats. 1891, p. 84), to the effect that no city shall incur an indebtedness for public improvements exceeding fifteen per cent of the assessed value of the taxable property therein, to that extent operates to repeal the former act.

Brookes vs. City of Oakland, 160 Cal. 423.

The formation of permanent road divisions and similar districts is a function pertaining purely to the legislative branch of the government. The legislature can create them, or cause them to be created, without giving any person a voice or hearing upon the matter. Wherefore, it may do so by giving such persons as it may think best an opportunity to be heard.

Potter vs. County of Santa Barbara, 160 Cal. 349; citing *Dean vs. Davis*, 51 Cal. 406; *Hughes vs. Ewing*, 93 Cal. 417; *Laguna vs. Martin*, 144 Cal. 209; *People vs. Sacramento Drainage District*, 155 Cal. 373.

An assessment for purposes of taxation levied upon public property of a mandatory or agency of the state, such as a municipal corporation, is void.

Smith vs. City of Santa Monica, 162 Cal. 221; citing *People vs. McCrery*, 34 Cal. 432; *People vs. Doe*, 36 Cal. 220; *Low vs. Lewis*, 46 Cal. 552; *Doyle vs. Austin*, 47 Cal. 360.

A corporation unless expressly forbidden so to do may acquire rights of contract and property in a foreign jurisdiction. A state, however, may exclude absolutely a foreign corporation not engaged in interstate commerce, but which proposes solely to engage in domestic business from doing such business within its limits, and may impose terms and conditions upon which alone such business may be commenced within its limits, provided no unconstitutional condition is made a part of any actual agreement.

H. K. Mulford Company vs. Curry, 163 Cal. 276.

When a foreign corporation has once engaged in domestic business within the state, the state may not exercise its powers of exclusion or regulation to the destruction of the property of the corporation or of its vested constitutional rights.

H. K. Mulford Company vs. Curry, 163 Cal. 276.

The state may grant or refuse to grant a franchise to be a corporation upon such terms as it sees fit.

City Properties Company vs. Jordan, 163 Cal. 587.

Section 362 of the Civil Code, as amended in 1905, permits a corporation to shorten the term of its corporate existence by an amendment to its articles of incorporation, even if the practical result of such abbreviation would amount almost to an immediate termination of the corporate life.

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The power to amend articles of incorporation under said section has reference to changes in those matters made essential by section 290 of that code to the contents of the original articles. The limitation contained in that section on the general right of amendment, forbidding an extension of the corporate term, indicates an intention to permit an amendment shortening the period of the corporation's life.

Tognazzini vs. Jordan, 165 Cal. 19.

NOTE.—Under an amendment to section 162 of the Civil Code (approved June 11, 1915; in effect August 10, 1915), a corporation is forbidden to terminate its corporate existence by amending its articles of incorporation. The decision in the case of *Tognazzini vs. Jordan*, 163 Cal. 19, was before this amendment.

A foreign corporation, which has complied with the laws of this state governing its right to do business herein, may exercise the power of eminent domain.

Deseret Water, Oil and Irrigation Company vs. The State of California, 167 Cal. 147.

The law does not contemplate that a corporation organized to render public service must first be engaged in such service before its right to condemn property under the power of eminent domain accrues, and hence its complaint in condemnation proceedings need not show it to be in charge of a public use.

Deseret Water, Oil and Irrigation Company vs. The State of California, 167 Cal. 147.

The power "to acquire" property for the purposes of a public use, given to a public service corporation by its articles of incorporation, includes the right "to condemn."

Deseret Water, Oil and Irrigation Company vs. The State of California, 167 Cal. 147.

No argument of hardship or inconvenience will justify a court in setting at naught the written terms of a city's charter, even at the instance of the city officials.

San Christina Investment Company vs. City and County of San Francisco, 167 Cal. 762.

Where a corporation is formed in a foreign state, for the purpose of doing business in California, the stockholders are, so far as concerns business transacted in California, to be held liable in accordance with the California statutes.

Provident Gold Mining Company vs. Haynes, 173 Cal. 44; citing *Peck vs. Noce*, 154 Cal. 351. (See, also, *Provident Gold Mining Company vs. Haynes*, 32 Cal. App. 802).

The identity of a corporation is not destroyed, nor are its legal obligations obliterated, by the mere fact of reincorporation under the same or different name, and a transfer of the corporate assets from the old to the new corporation will, when warranted by the pleadings and proof, be considered as having been done to hinder, delay, and defraud creditors of the old corporation.

Strahm vs. Fraser, 32 Cal. App. 447.

Citations from Decisions of the Supreme and Appellate Courts to
November 1, 1917, not yet published in the bound volumes.

CITATIONS FROM DECISIONS OF THE SUPREME AND APPELLATE COURTS.

XII. **Assessment. Description.**

The purposes to be subserved by the description are to enable the owner to discharge his land from the lien of the assessment by paying the same, and also, in case the land shall be sold to satisfy the lien, that bidders may know what land is offered for sale, and that the purchaser may receive a sufficient conveyance.

Houghton vs. Kern Valley Bank, 24 Cal. App. Dec. p. 689.

A written instrument purporting to convey real property which describes the property as "bounded on the north and east by the lands of Robinson and Bodega avenue in the town of Sebastopol, on the east by land of Jimmy McChristian, and on the south by Calder avenue extended and containing 5½ acres," is void for insufficiency of description, as the property is not given a westerly boundary, and is indefinite and uncertain in its north and easterly boundaries.

Scott vs. Woodworth, 25 Cal. App. Dec. p. 203.

XIII. **Assessment. Description, Maps, Plats, etc.**

A recorded deed to a lot which did not correctly name the tract as "Garavanza Addition No. 1," but located the tract "at Garavanza," and which referred to a map made by W. F. McClure in April and May, 1886, as a map recorded in Miscellaneous Records book 9, at pages 85, 86, and 87, sufficiently describes the lot to impart constructive notice to a subsequent purchaser and to convey title, notwithstanding there was no such map recorded at those pages, where the evidence shows that there was a map of "Garavanza Addition No. 1" recorded in said book 9, at pages 45 and 46, and that such map was the only map of record in the county of the property situated in the territory or district known as Garavanza.

Prouty vs. Rogers, 24 Cal. App. Dec. p. 516.

An assessment of lots for the purposes of taxation, which are merely described on the assessment book as "In Bakersfield, lots 1, 2, 3, block 132," without reference to any map, is void for uncertainty, where it is shown that there is but one block 132 in the city of Bakersfield, and three recorded maps of that city upon each of which the lots are delineated in different parts of the block.

Houghton vs. Kern Valley Bank, 24 Cal. App. Dec. p. 689.

XXII. **Assessment. Railroads.**

In this action for the foreclosure of a lien for a street improvement against certain property of a railroad corporation it is held that the finding, upon which the judgment was predicated, that the property was not a part of the corporation's right of way was not supported by the evidence, and that the court arbitrarily determined that the railroad company's "right of way" consisted only of the lands occupied by the tracks with sufficient clearance for the convenient passage of rolling stock, without any investigation of the amount of business transacted or inquiries regarding the necessities in the matter of space.

Wilson vs. Pacific Electric Railway Company, 54 Cal. Dec. p. 397.

The "right of way" of a railroad company is not the mere right to operate trains over tracks and can not arbitrarily be confined to an easement over just enough land running trains. The criterion is the land actually occupied and reasonably necessary for use by the common carrier.

Wilson vs. Pacific Electric Railway Company, 54 Cal. Dec. p. 397.

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XXX. Assessment Roll. *Certifying.*

An assessment of land for city taxes is invalid, and no title to the land is acquired by the city through the tax proceedings, where the assessor's affidavit attached to the assessment book was not sworn to before any officer entitled to administer an oath, although subscribed by him, the requirement of the ordinance being that the affidavit be subscribed, sworn to and affixed to the assessment roll.

Leonard vs. Jaffray, 53 Cal. Dec. p. 806.

XXXII. Exemptions.

The power of a city to release the property of certain landowners from the burden of their share of the cost of future street improvements is a power delegated by the sovereignty, and is therefore in derogation of sovereignty and is to be strictly construed in favor of the sovereign.

Ransome-Crummey Company vs. Bennett et al., 54 Cal. Dec. p. 293.

The exemption from future taxation awarded to property owners who have paid for the improvement of a street fronting on their land is a gratuity, and therefore subject to repeal by the legislature at any time, without inflicting upon the property owner any grievance of which he can be heard to complain.

Ransome-Crummey Company vs. Bennett et al., 54 Cal. Dec. p. 293.

XXXIII. Equalization.

The provisions of sections 15 and 16 of the protection district act of 1895 as to the giving of notice of the hearing to property owners are mandatory and not directory, and the failure to comply therewith before the work is done invalidates the proceedings.

Pasadena Park Improvement Company vs. Lelande, 53 Cal. Dec. p. 912.

XXXVI. Taxation. *Liability.*

Under the "Vrooman Act" as it existed prior to the amendment of 1911 expressly authorizing the assessment of rights of way and subjecting them to sale for non-payment of assessments, a lien could not be successfully foreclosed of a railroad right of way.

Wilson vs. Pacific Electric Railway Company, 54 Cal. Dec. p. 397.

XL. Taxes. *Support of State Government.*

Under section 14 of article XIII of the constitution, in assessing for the purposes of taxation a public service corporation engaged in the sale of gas and electricity, the "gross receipts from operation," are not the equivalent of "gross earnings" or of "gross income," but are the receipts on all business done, and where a part of the commodities sold are purchased from other corporations, the price of the same is not to be subtracted from the sale of the commodities made by the corporation.

Pacific Gas and Electric Company and Coast Counties Light and Power Company vs. Roberts, 54 Cal. Dec. p. 370.

In the matter of the taxation of public service corporations, insurance, banking and trust companies, it is the clear intention of section 14 of article XIII of the constitution, to include within its terms the corporations therein designated only when such corporations are rendering a service to the public.

Transcontinental Telegraph Company vs. Neylan et al., 25 Cal. App. Dec. p. 185.

Property owned by a telegraph company which is not engaged in any public service is subject to all the taxes that may be imposed upon nonoperative property,

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and also to the payment of the license taxes under the Corporation State License Tax Act.

Transcontinental Telegraph Company vs. Neylan et al., 25 Cal. App. Dec. p. 185.

XLV. Taxes. Payment, Refunding, Recovery.

The provisions of section 3819 of the Political Code relating to the recovery of taxes paid under protest has no application to the matter of levying taxes under the charter of the city and county of San Francisco, and a complaint in an action to recover of such city and county taxes alleged to have been illegally levied and paid under protest, fails to state a cause of action, in the absence of any charge of duress or coercion in their collection.

Keyes vs. City and County of San Francisco, 23 Cal. App. Dec. p. 885.

LVII. Tax Deed.

The execution of a deed to the state is not proven by the recitals in the delinquent assessment roll and in the authorization of the state controller, that the property had been sold to the state.

Jones vs. Luckel, 53 Cal. Dec. p. 302.

In view of the provisions of section 1113 of the Civil Code, there is no implied covenant against incumbrances containing the word "grant," where only the right, title and interest of the grantor in the premises is conveyed thereby.

Southern Pacific Company vs. Dore, 25 Cal. App. p. 322.

LXI. Tax Title.

A provision in a deed of trust to secure the payment of a promissory note that in the event of the default of the debtor the trustee should publish notice of the time and place of the sale of the property described in the deed "at least twice a week for four successive weeks" in some newspaper published in the county, does not require that the publication of the notice be continued down to the very time of sale, and a publication for the requisite number of times, which was last published fifteen days before the day noted for the sale, is not unreasonably remote.

Winbiger vs. Sherman, 53 Cal. Dec. p. 722.

In an action to quiet title to a tract of land as against a defendant claiming under an alleged void tax deed, the plaintiff is not entitled to a decree, in the event that the deed is found invalid, until he repays to the defendant the amount expended by him in purchasing the property at the tax sale, regardless of the fact that the assessments and levies of taxes were void on account of numerous defects and irregularities.

Squires vs. Estey, 24 Cal. App. Dec. p. 589.

LXII. Tax Title. Adverse Possession.

In an action to quiet title to land to which the defendant claims ownership under a tax deed, it is essential for the defendant to prove the execution of a deed to the state vesting the title of the delinquent taxpayer in the state, as well as a deed from the state to himself.

Jones vs. Luckel, 53 Cal. Dec. p. 302.

LXV. Sales of Tax-Deeded Lands.

Under section 3897 of the Political Code, upon a sale of property sold to the state for delinquent taxes, the mailing of a copy of the notice of the sale, where the post office address of the party to whom the land was last assessed is known, is a prerequisite to the authority of the tax collector to make the sale.

Rudell vs. Collins, 53 Cal. Dec. p. 182.

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Under section 3897 of the Political Code, which, prior to its amendment in 1913, did not, in terms, prescribe the time when such copy should be mailed, a fair construction required that the mailing should be made at least three weeks before the sale, and a mailing of only ten days before the sale was insufficient.

Rudell vs. Collins, 53 Cal. Dec. p. 182.

Under section 3897 of the Political Code, prior to the amendment in 1913, a deed from the tax collector to the purchaser was required to recite, either a mailing of a copy of the notice of the sale in compliance with the statute, or the existence of the fact which made such mailing unnecessary, *i. e.*, that the address was not known to the tax collector, and a deed which did not contain either of such recitals, was void.

Rudell vs. Collins, 53 Cal. Dec. p. 182.

Where in an action to quiet title to land it is not shown that the state ever acquired any lien for taxes chargeable against the property described in the complaint, it is not essential that the condition be imposed that the plaintiff reimburse the defendant for money expended for taxes, as a condition to the quieting of the plaintiff's title.

Jones vs. Luckel, 53 Cal. Dec. p. 302.

A municipal ordinance, providing that before sale by the city of property which had been sold to it for municipal taxes, the clerk should fix a date for such sale and give notice thereof by publication for at least ten days in a newspaper, is in contravention of the charter of such city providing that the mode and manner of collecting delinquent municipal taxes and enforcing the lien thereon shall substantially be the same as the mode and manner prescribed by law for the collection of state and county taxes, which in case of sale requires a three weeks' publication.

Leonard vs. Jaffray, 53 Cal. Dec. p. 806.

Under section 3897 of the Political Code, a deed by the state of property acquired under delinquent tax sale proceedings, which does not show that notice of the sale was posted on the property, is void.

Crouch vs. Shafer, 24 Cal. App. Dec. p. 1028.

LXVIII. Statutory Construction.

Where the words of a statute are not ambiguous and their effect is not absurd, the court will not give it other than its plain meaning, although it may appear probable that a different object was in the mind of the legislature.

Chenoweth vs. Chambers, 24 Cal. App. Dec. p. 392.

LXIX. Corporations. Municipal, Public, Private, Classification.

Protection districts organized under the law of 1895 (as amended in 1909 and 1911), are not public corporations, as the whole scope of the act is to authorize the board of supervisors to create an assessment district to the end that the property in such district in proportion to the benefits it receives shall pay "for the improvement and rectification of the channels of innavigable streams and water courses, and for the prevention of the overflow thereof by widening, deepening, straightening and otherwise improving the same."

Pasadena Park Improvement Company vs. Lelande, 53 Cal. Dec. p. 912.

Reclamation districts are exempted from the operation of the Workmen's Compensation Act, as they are neither public nor private corporations within the meaning of section 13 of said act defining "employers," but are governmental mandatories or agents vested with the limited powers to accomplish limited and specific work.

Bettencourt vs. Industrial Accident Commission et al., 54 Cal. Dec., p. 8.

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Wohlford, Best vs.	144—733; 153—17
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Wohlford vs. City of Escondido	2 + 429
Wood and Jack, Southern Pacific Railroad Co. vs.	124—475
Wood vs. County of Calaveras	164—398
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Woodhams, Ransome-Crummey Co. vs.	29 + 356
Woodman, Rollins vs.	117—516
Workman, Fox vs.	155—201
Workman, Southern California Railway Company vs.	146—80
Worth vs. Worth	155—599
Worthing, Whitcomb vs.	30 + 629
Wright vs. Anglo-California Bank, Ltd.	161—500
Wright vs. Board of Public Works of Los Angeles	163—328
Wright vs. Fox	150—680
Wright, Merchants Trust Co. vs.	161—149
Wright, Rollins vs.	93—395
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CALIFORNIA INHERITANCE TAX LAW

[In effect July 27, 1917]

DIGEST OF INHERITANCE TAX LAWS, 1893 TO 1915

CALIFORNIA INHERITANCE TAX LAW.

The first of the series of acts which led up to the present inheritance tax law of the State of California was enacted March 23, 1893 (Chapter CLXVIII, Statutes 1893). This parent act was collateral. It did not tax direct heirs. It remained in force with sundry amendments during intervening sessions of the legislature, until 1905, at which time there was a complete revision of the law. The law was again revised in 1911 and 1913; but these later revisions mainly concerned procedure under the act. The basic principles of the law of 1905 were retained in the provisions of 1911 and 1913 and the amendments of 1915 and 1917.

The law in force at the death of decedent determines the rate of tax chargeable against any inheritance carved out of his estate. Since inheritance taxes due are often not paid until some years following the death of the decedent involved, it is important in the administration of the law to have in mind the various rates and exemptions that have existed during the various periods following the enactment of the parent Inheritance Tax Act. Wherefore it seems fit to briefly set forth a digest of those parts of the Inheritance Tax Act in force from 1893 to 1915, inclusive, which relate to rates and exemptions in force thereunder.

ACT OF 1893.

Section 1, Chapter CLXVIII, Statutes 1893, in effect March 23, 1893, which fixed the rates under said act reads as follows:

"After the passage of this act, all property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of California, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations, and institutions now exempted by law from taxation, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county, as hereinafter defined, for the use of the state; and all administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed; *provided*, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax."

AMENDMENTS OF 1895.

Chapter XXVIII, Statutes 1895, in effect March 9, 1895, made no changes in the rates or exemptions. Amendments refer to valuation of life estates, etc.

AMENDMENTS OF 1897.

Chapter LXXXIII, Statutes 1897, in effect March 9, 1897, extended the exemptions to "nieces and nephews when a resident of this state." The Supreme Court

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of this state in *Estate of Johnson*, 139 Cal. 532, held that the effect of this amendment was to extend the exemption to all nieces and nephews resident of any state of the Union, since section 2 of article IV of the constitution of the United States provides "that citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states." The exemptions were also extended by the amendment to "any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose."

AMENDMENTS OF 1889.

Chapter LXXXV, Statutes 1899, in effect March 14, 1899, abolished the exemptions to brothers, sisters, nieces and nephews.

AMENDMENTS OF 1903.

Chapter CCXXVIII, Statutes 1903, in effect March 20, 1903, added to the exempt class "lineal ancestors," and also "any person to whom the deceased for not less than ten years prior to death, stood in the mutually acknowledged relation of a parent."

ACT OF 1911.

Chapter CCCXIV, Statutes 1905, went into effect July 1, 1905. Tables of rates and exemptions will be found following the 1917 law in this pamphlet. The 1905 revision taxed not only collateral, but also direct heirs. The tax was made a graded one, the rates being made higher as the size of the inheritance increased, and also as the relationship to the decedent became more distant.

ACT OF 1911.

Chapter 395, Statutes 1911, went into effect July 1, 1911. Tables of rates and exemptions will be found following the 1917 law in this pamphlet. In the 1911 revision the following important changes were made:

(1) A limitation of the lien for the tax against real property was inserted, so that after five years from the death of decedent a bona fide purchaser would be relieved of said lien.

(2) A penalty from \$1,000 to \$10,000 was added for the violation of section 13 of the Inheritance Tax Act which provides that shares of stock, deposits and other assets of a decedent shall not be transferred after his death without giving notice to the state controller and securing his consent to such transfer.

(3) The most important change made in the 1911 revision related to the appraisal of estates to fix the tax. Section 14 of said act provided for the appointment of one or more persons in each county of the state by the state controller to act as inheritance tax appraiser therein. Section 15 prescribed the procedure before said appraiser. In connection with these revisions section 1444 of the Code of Civil Procedure was amended so as to provide that an inheritance tax appraiser must be appointed as one of the three probate appraisers or as sole probate appraiser in every estate.

ACT OF 1913.

A glance at the table of rates and exemptions imposed under the 1913 revision (shown following the 1917 law) shows a big increase in the rates. Section 3, regarding powers of appointment, provided that such power should be deemed a taxable transfer when created rather than when exercised as was provided under previous acts.

Section 16 revised the procedure for fixing tax by providing that in *every* probate proceeding the court shall appoint an inheritance tax appraiser at the same time with the appointment of the probate appraiser or appraisers, for the purpose of

INHERITANCE TAX LAW.

ascertaining whether or not there may be any inheritance tax due out of the estate. Subdivision *b* of the section introduced into the law a simple method whereby the inheritance tax appraiser, incident to his duties as a probate appraiser, and without expense to the state, might investigate small estates and return a no tax certificate where it might appear clear that no tax would be due.

AMENDMENTS OF 1915.

Chapters 189 and 198, Statutes of 1915, amending the "inheritance tax act" (of 1913) went into effect August 8, 1915.

Chapter 198 added subdivision 8 to the act providing for taxation of joint tenancies, amended section 14 by providing that the claims of inheritance tax appraisers must receive the approval of the controller. Chapter 189 amended sections 5, 6 and 7 by changing the classification of persons taxed and raising the rates providing for four instead of five classes of persons taxed. See table of rates and exemptions of 1915 amendments following the 1917 law in this pamphlet.

ACT OF 1917.

Chapter 589 of Statutes of 1917 revises the inheritance tax act and said revision went into effect on July 27, 1917.

Important modifications were made in procedure, as shown in sections 16 and 17 of the revised act. A judgment or decree fixing the amount of inheritance tax is now made enforceable as other judgments or decrees. See last paragraph subdivision 3, section 17. No changes are made in the rates or exemptions, except that in the beginning of the act the widow's half of community is subtracted out of the list of taxable properties, and she is deemed for the purposes of the act, to have received her half of the community for valuable and adequate consideration and not merely as an heir to her husband. (See subdivision 2, section 1.)

The procedure to determine the tax is simplified. Provision has been made whereby the parties chargeable with the tax may more readily themselves petition to have the tax determined. The procedure in suits to quiet title against the tax has also been simplified, and the possibility of a suit to quiet title being brought where there are other proceedings pending to fix the tax has been eliminated.

Section 3 limits the lien to the property chargeable with the tax in a given case. Subdivision 6, section 2 provides that a power of appointment shall be taxed when exercised. This is in accordance with the law as it stood prior to the 1913 amendment.

RELATED ACTS.

Following the compiled inheritance tax act will be found several companion acts which relate to inheritance taxes.

(1) Section 1444 of the Code of Civil Procedure has been amended so as to require that an inheritance tax appraiser act in every probate appraisement.

(2) Section 1669 of the Code of Civil Procedure was amended in 1905 to provide that no decree of distribution in any estate shall be made until the court is satisfied that "any inheritance tax which is due and payable" has been fully paid.

(3) Section 1723 of the Code of Civil Procedure has been amended to provide that where any interest in joint tenancy is transferred thereby, the inheritance tax thereon shall be determined in the same manner as in probate of an estate.

(4) Section 445 of the Political Code provides for inheritance tax department under authorization and direction of the state controller.

(5) Section 1380 of the Code of Civil Procedure has been amended to include the state controller.

(6) Section 963 of the Code of Civil Procedure has been amended so as to remove any possible doubt about an inheritance tax order or decree being appealed.

THE "INHERITANCE TAX ACT."

CHAPTER 589.

[In effect July 27, 1917.]

An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed, to be known as the "inheritance tax act"; and to repeal chapter five hundred ninety-five of the laws of the session of the legislature of California of 1913, approved June 16, 1913, known as the "inheritance tax act," and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act.

[Approved May 23, 1917.]

The people of the State of California do enact as follows:

Title of act.

Definition of "estate" and "property."

Wife's share of community property not taxable.

Proviso as to property transferred to wife.

Presumption as to community property.

Definition of "transfer."

Definition of "decedent."

Definition of "county treasurer," and "inheritance tax appraiser."

SECTION 1. (1) This act shall be known as the "inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainer, vendor, or donor passing or transferred to individual legatees, devisees, heir, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state; *provided*, that for the purpose of this act the one-half of the community property which goes to the surviving wife on the death of the husband, under the provisions of section one thousand four hundred two of the Civil Code, shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to go, pass, or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act; *provided, further*, that in case of a transfer of community property from the husband to the wife, within the meaning of subdivisions (3) or (5) of section two of this act, one-half of the community property so transferred shall not be subject to the provisions of this act; and *provided, further*, that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainer, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

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SEC. 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(2) When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(3) When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration (i. e., a consideration equal in money or in money's worth to the full value of the property transferred):

(a) In contemplation of the death of the grantor, vendor, assignor or donor, or,

(b) Intended to take effect in possession or enjoyment at or after such death.

When such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testate or intestate laws.

(5) Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the surviving joint tenant or joint tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint tenant or joint tenants to have originally belonged to him or them and never to have belonged to the decedent.

(6) Whenever any person, trustee or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same

Property taxable.

Resident decedents.

nonresident decedents.

Transfers for valuable consideration.

Contemplation of death.

After death.

Transfers in expectancy.

Meaning of "contemplation of death."

Property held in joint account.

Appointment deemed transfer.

manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person, trustee or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons, trustees or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

When bequest exceeds reasonable compensation.

(7) Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceeds what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

Property transferred subject to charge determined by death of person.

(8) Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

Aggregate value of more than one transfer.

(9) When more than one transfer within the meaning of any of the preceding subdivisions of this section has been made, either before or after the passage of this act, by a decedent to one person, the tax shall be imposed upon the aggregate market value of all of the property so transferred to such person in the same manner and to the same extent as if all of the property so transferred were actually transferred by one transfer.

U. S. tax not deductible.

(10) In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.

Lien.

SEC. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided*, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided*, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; and, *provided*, that no such lien shall cease within two years from the date of the passage of this act.

Statute of limitations does not apply.

Bona fide purchaser five years.

Primary rates on first \$25,000 after deducting exemptions.

SEC. 4. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

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(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal ancestor, lineal issue of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent (provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter), or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of a decedent, a wife or widow of a son, or the husband of a daughter of the decedent at the rate of three per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

SEC. 5. (1) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision one of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, four per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, seven per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, ten per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twelve per centum of such excess.

(f) Upon all in excess of one million dollars, fifteen per centum of such excess.

(2) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision two of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, six per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, nine per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twelve per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, fifteen per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty per centum of such excess.

(f) Upon all in excess of one million dollars, twenty-five per centum of such excess.

Husband,
wife,
children,
parents.

Brother,
sister, or
descendant
thereof;
son-in-law,
daughter-
in-law.

Aunt or
uncle or
descendant
thereof.

Other
degrees of
con-
sanguinity.

Rates in
excess of
\$25,000.

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(3) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision three of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, eight per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, ten per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, fifteen per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty-five per centum of such excess.

(f) Upon all in excess of one million dollars, thirty per centum of such excess.

(4) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision four of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, ten per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, fifteen per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twenty per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty-five per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars, thirty per centum of such excess.

SEC. 6. The following exemptions from the tax are hereby allowed:

Exemptions.

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt; *provided, however,* that such society, corporation, institution or association be organized or existing under the laws of this state or that the property transferred be limited for use within this state.

(2) Property of the clear value of twenty-four thousand dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section four, shall be exempt.

(3) Property of the clear value of two thousand dollars, transferred to each of the persons described in the second subdivision of section four, shall be exempt.

(4) Property of the clear value of one thousand dollars, transferred to each of the persons described in the third subdivision of section four, shall be exempt.

(5) Property of the clear value of five hundred dollars, transferred to each of the persons and corporations described in the fourth subdivision of section four, shall be exempt.

Others.

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SEC. 7. (1) All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per cent per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond for the payment of said tax, together with interest.

(2) The penalty of ten per cent per annum imposed by subdivision (1) of this section for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, can not be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

SEC. 8. (1) When any grant, gift, legacy, devise or succession upon which a tax is imposed by section two of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section sixteen or seventeen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

(2) In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; *provided, however*, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section eleven hereof upon order of the court having jurisdiction.

(3) When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or

Penalty of
ten per cent
reduced to
seven
per cent.

Tax on
limited
estate due
at death.

No allowance
on account
of contingent
incumbrance.

A return
allowed if
incumbrance
takes effect.

Conditional
taxes
taxable at
highest rate.

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Possible
return of
overpayment.

trustees out of the property transferred; *provided, however*, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act; such return of overpayment shall be made in the manner provided by section eleven of this act, upon order of the court having jurisdiction; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax or the trustees thereof may elect not to pay the same until such person or persons, or body politic or corporate beneficially interested in such property shall come into the actual possession or enjoyment thereof, and in that case such person or persons or body politic or corporate or trustees shall execute a bond to the people of the State of California in a penalty of twice the amount of said tax with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon at the rate of seven per cent per annum commencing at the expiration of eighteen months from the death of the decedent at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, and conditioned further, that if said bond be not renewed and the returns made as herein provided, the amount of said tax and interest thereon shall immediately become due and payable.

Bond for
deferred
payment
of tax.

Said bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided, further*, that such person or persons or body politic or corporate, or trustees, shall enter into such security within a period of ninety days after the entry of the order or decree fixing the inheritance tax charged against such transfer, or within such period thereafter as the court may in its discretion permit, and shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the date of such order or decree fixing tax, and at such times thereafter as the court on the application of the state controller may require, and renew such security every five years after the date of the approval thereof.

Conditions
of bond.

Upon the approval of said bond as herein provided, said tax shall cease to be a lien upon the property so transferred. If such security shall not be renewed before the expiration of each five-year period, said bond shall immediately become due and payable and if the same be not paid forthwith, the attorney general shall file an action in the name of the people of the state on the relation of the controller, to recover the same and the penalties thereunder and no demand for payment shall be necessary before the institution of such suit. Whenever it shall be made to appear to the satisfaction of the court that any surety on such bond or undertaking has for any reason become insufficient, the court may on motion of the state controller, after such notice to such person or persons, body politic or corporate, or trustees as the court may require, order the giving of a new undertaking with sufficient sureties in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such original undertaking, or subsequent undertaking, shall cease and the amount of said tax and interest thereon shall immediately become due and payable.

Bond filed.

Lien ceases.

Default
on bond.

Default on bond.

Sureties
on bond.

Sureties on bond.

INHERITANCE TAX LAW.

(4) Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

(5) Where an estate or interest can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

(6) The value of every future, or contingent or limited estate, income or interest, shall, for the purposes of this act be determined by the rule, methods and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five (5) per cent per annum. The insurance commissioner shall without a fee on the application of any superior court or of any inheritance tax appraiser determine the value of any future or contingent estate, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's application or other facts to him submitted by said appraiser or said court and certify the same in duplicate to such court or appraiser, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct. When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of said interest for the purpose of taxation under this act shall be the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which such annuitant or life tenant was entitled to the annuity or was in possession of the life estate.

SEC. 9. (1) Any administrator, executor, or trustee having in charge Tax or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

When estates in expectancy to be appraised at full value.

Defeasible estates taxable.

Value of contingent estate determined by mortality tables.

When insurance commissioner shall act.

deducted from legacy.

REVENUE LAWS OF CALIFORNIA.

Tax paid
cou ty
treasurer.

Receipt.

Controller
must
countersign.

Duplicate
copy of
receipt.

Refund of
tax paid
before debts
are proven.

Tax on
amount
wrong ful y
deducted.

Refund of
tax paid
w^t en order
modified
or reversed.

Application
for refund
mu t be
made within
one year.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

SEC. 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

SEC. 11. (1) If any debts shall be proved against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the superior court having jurisdiction, on notice to the state controller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer; or if such tax has been paid to such county treasurer, such officer shall refund out of any inheritance tax moneys in his hands or custody such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this act.

(2) Where it shall be proved to the satisfaction of the superior court that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such superior court to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

(3) If, after the payment of any tax in pursuance of an order fixing such tax, made by the superior court having jurisdiction, such order be modified or reversed by the superior court having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state controller, the county treasurer shall refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of tax fixed by the order modified or reversed, out of any inheritance tax moneys in his hands or custody, and credit himself with the same in the account required to be rendered by him to the controller on his semiannual settlement; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such overpayment.

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(4) When any amount of said tax shall have been erroneously paid, the superior court having jurisdiction, on application after notice to the state controller, and on satisfactory proof to it, shall by order require the county treasurer to refund and pay to the executor, administrator, trustee, person or persons who had paid any such tax in error the amount of such tax so erroneously paid; *provided*, that all applications for such repayment of such tax so erroneously paid shall be made within one year of the date of the entry of the order fixing tax or of the decree of final distribution of the estate. Such refund shall be made by said treasurer out of any inheritance tax moneys in his hands or custody and he shall credit himself with the same in the account required to be rendered by him to the controller on semiannual settlement; and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such erroneous payment.

(5) This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

SEC. 12. (1) Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such person, firm, institution, company, association or corporation, including the stock transfer book of any corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder. Any and all information acquired by said state controller or said inheritance tax attorney or assistant inheritance tax attorneys shall be deemed and held by said state controller and said inheritance tax attorney and assistant inheritance tax attorneys and each of them, as confidential, and shall not be divulged, disclosed or made known by them or any of them except in so far as may be necessary for the enforcement of the provisions of this act. Any controller or ex-controller, or inheritance tax attorney or ex-inheritance tax attorney, or assistant inheritance tax attorney or ex-assistant inheritance tax attorney, who shall divulge, disclose or make known any information acquired by such inspection and examination aforesaid, except in so far as the same may be necessary for the enforcement of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ninety days, or both.

(2) Any officer or agent of any firm, institution, company, association or corporation having or keeping an office within this state, who has in his custody or under his control any book, record, account, paper or document of such firm, institution, company, association or corporation, and any person having in his custody or under his control such book, record, account, paper or document who refuses to give to the state controller, or said inheritance tax attorney, or any of said assistant inheritance tax attorneys, lawfully demanding, as provided in this section, during office hours to inspect or take a copy of the same, or any part thereof, for the purposes hereinabove provided, a reasonable opportunity so to do, shall

Erroneous tax to be refunded.

Limitation.

Refund, how made.

This section applies to what.

When stock is transferred by foreign executor tax shall be paid.

Inspection of books.

Information divulged is confidential.

Penalty for divulging information.

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be liable to a penalty of not less than one thousand dollars nor more than twenty thousand dollars, and in addition thereto shall be liable for the amount of the taxes, interest and penalties due under this act on such transfer, and the said penalties and liabilities for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

Must get written consent to transfer stock.

Safe deposit and trust companies not to deliver property.

Retention of tax.

Controller may grant consent.

Penalty for violation hereof.

Inheritance tax, appraisers, controller to appoint

Compensation.

SEC. 13. (1) No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

(2) No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; *provided*, that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

(3) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to a penalty of not more than twenty thousand dollars, and in addition thereto said safe deposit company, trust company, corporation, bank or other institution, person or persons shall be liable for the amount of the taxes, interest and penalties due under this act on said securities, deposits, or other assets above mentioned, and said penalties and liabilities of said safe deposit company, corporation, bank or other institution, person or persons for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation to be

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fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or judge thereof; *provided*, that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; *and provided, further*, that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

Penalty for
misfeasance
in office.

SEC. 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other; *provided*, that the superior court having acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said probate proceedings all questions in relation to any tax arising under the provisions of this act: (a) Upon property passing in said probate proceedings. (b) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section one thousand four hundred forty-four of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section two of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, referee, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of

Superior
court
designates
inheritance
tax
appraisers.

Powers of
referee.

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Attendance of witnesses.

said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpœnas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

Notice, to whom and how given.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notices to be posted in at least three public places in the county, one of which must be the place where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon said superior court shall, by order, fix a time, not less than ten days thereafter, for the hearing thereof, and shall direct the clerk of said superior court to give such notice thereof as it shall deem necessary; *provided*, that a copy of such notice and of such objections shall be forthwith mailed to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises.

Duty of appraiser where no tax due.

(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises.

Court decree.

INHERITANCE TAX LAW.

Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

SEC. 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof.

If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and, is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(2) Verified petitions may be filed by any interested party with the superior court, alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be

Procedure to determine tax when no probate.

Failure to obey citation.

Powers of referee.

Report to court.

Service of citation, proof, etc.

Trial in superior court.

Petition to determine tax.

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Duty of court.

determined, and that the petitioner desires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

No tax, or tax less than \$20.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

Actions to quiet title.

(3) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

Defendants.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

Decree of court affirming tax.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the person or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons reasonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

Commencement of action, county.

(4) Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is

INHERITANCE TAX LAW.

sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(5) No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall any undertaking be required from or costs charged against the state controller or the State of California in any such proceeding.

SEC. 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

SEC. 20. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum of the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him: *provided*, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent, nor more than five thousand dollars out of the total inheritance taxes accounted for in any one year.

SEC. 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and

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including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; *provided*, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

Expenses incurred to be paid.

SEC. 22. All taxes levied and collected under this act, up to the amount of two hundred fifty thousand dollars annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of two hundred fifty thousand dollars annually shall be paid into the state treasury to the credit of the general fund thereof.

Disposition of taxes collected.

SEC. 23. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the State of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller.

Officer failing to perform duty.

SEC. 24. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Constitutionality of act.

SEC. 25. An act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder or under an act hereby repealed to be known as the 'inheritance tax act'; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens, arising hereunder'; to repeal an act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers; to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens arising hereunder"; to repeal an act entitled "An act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds." approved March 23, 1893, and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act, approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act, approved April 7, 1911"; approved June 16, 1913, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; *provided*, however, that such repeal shall in nowise affect any suit, prosecution or proceeding pending at the time this act shall take effect, or any right which the State of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been com-

Suits pending not affected by repeal.

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menced, and where no proceeding has been commenced to collect any tax arising under any act hereby repealed the procedure to collect such tax shall conform to the provisions hereof; nor shall such repeal affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act.

CHAPTER 212.

An act to amend section one thousand four hundred forty-four of the Code of Civil Procedure, relating to appraisers of estates of deceased persons.

[Approved May 10, 1917.]

The people of the State of California do enact as follows:

SECTION 1. Section one thousand four hundred forty-four of the Code of Civil Procedure is hereby amended to read as follows:

1444. To make the appraisement, the court, or a judge thereof, must appoint three disinterested persons, one of whom must be one of the persons to inheritance tax appraisers provided for by law (any two of whom may appraise estate of deceased persons. act, provided, that one of them be the inheritance tax appraiser); *provided*, that the court may, in its discretion, appoint said inheritance tax appraiser as sole appraiser to appraise said estate. Each of said appraisers is entitled to receive, from each estate he appraises, as compensation for his services, not to exceed five dollars per day (together with his actual and necessary expenses), to be allowed by the court or judge. The appraisers or appraiser must, with the inventory, file a verified account of their or his services and disbursements. If any part of the estate is in any other county than that in which letters issued, an appraiser or estate is in appraisers thereof may in the same manner as above provided, be appointed, either by the court or judge having the jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction. No clerk or deputy, nor any person Clerk, etc., related by consanguinity or affinity to or connected by marriage with, or being a partner or employee of the judge of the court, shall be appointed or shall be competent to act as appraiser in any estate, or matter or proceeding pending before said judge or in said court.

Distribution of Estate Not to be Made Until Inheritance Tax Paid.

(Code of Civil Procedure).

Section 1669. Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all state, county and municipal taxes, legally levied upon property of the estate, and any inheritance tax which is due and payable, have been fully paid.

CHAPTER 726.

An act to amend section one thousand seven hundred twenty-three of the Code of Civil Procedure, relating to the disposition of life estates or homesteads, on owner's death, in certain cases.

[Approved May 31, 1917.]

The people of the State of California do enact as follows:

SECTION 1. Section one thousand seven hundred twenty-three of the Code of Civil Procedure is hereby amended to read as follows:

1723. If any person has died or shall hereafter die who at the time of his death was the owner of a life estate which terminates by reason of the death of such person; or if such person at the time of his death was one of two or more persons holding land in joint tenancy, which land by persons dying who owned life estates or homesteads.

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reason of his death vests absolutely in the surviving joint tenant or tenants; or if such person at the time of his death was the spouse of a person owning land upon which either spouse had declared a homestead, the homestead interest of which deceased person absolutely terminated by reason of his death; any person interested in the land, or in the title thereto in which such estate or interest was held, may file in the superior court of the county in which the land or any part thereof is situated, his verified petition setting forth such facts, and thereupon and after such notice by publication or otherwise as the court may order; *provided*, that notice shall be given in each county where any part of said land is situated in the same manner as in the county where said petition is filed, the court shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such estate or interest so terminated or vested, the court shall make a decree to that effect, and thereupon a certified copy of such decree shall be recorded in the office of the county recorder of each county in which any part of said land is situated, and thereafter shall have the same effect as a decree of final distribution so recorded; *provided*, that if such estate or interest was a joint tenancy, any inheritance tax which is due and payable by reason of the death of such deceased person, must be fully paid before such decree is made; and the amount of said inheritance tax shall be fixed, and said tax shall be paid, in the same manner as in the case of an administration upon the estate of a decedent.

Interested persons may petition concerning.

Notice, how given.

Decree to be recorded.

Proviso as to joint tenancy.

CHAPTER 721.

An act to amend section four hundred forty-five of the Political Code, authorizing the controller of state to maintain an inheritance tax department and in connection therewith to appoint an inheritance tax attorney and assistants thereto.

[Approved May 31, 1917.]

The people of the State of California do enact as follows:

SECTION 1. Section four hundred forty-five of the Political Code is hereby amended to read as follows:

Inheritance tax department establi. hed.

Duties.

Inheritance tax attorney and assistants.

445. The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state. Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for use of inheritance tax appraisers or other use as the controller may direct. In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney, whose office shall be in the city of Sacramento, five assistant inheritance tax attorneys, two of whom shall have their offices in the city of Los Angeles, two of whom shall have their offices in the city and county of San Francisco, and one of whom shall have his office in the city of Sacramento. Said attorneys shall be civil executive officers and shall be admitted and licensed to practice before the supreme court of this state. The inheritance tax attorney shall, under the authority

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and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with Duties. said department and shall perform such other duties as the controller may direct. Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct. The salary of said inheritance tax attorney shall be three Salaries. thousand six hundred dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be three thousand six hundred dollars per annum. The salary of the second assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be two thousand four hundred dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city and county of San Francisco shall be three thousand six hundred dollars per annum. The salary of the second assistant inheritance tax attorney, whose office shall be in the city and county of San Francisco shall be two thousand four hundred dollars per annum. The salary of said assistant inheritance tax attorney whose office shall be in the city of Sacramento shall be two thousand seven hundred dollars per annum. The salaries of said inheritance tax attorney and of said assistant inheritance tax attorneys shall be paid at the same times and in the same manner as the salaries of other state officers. Said attorneys shall also receive their necessary traveling and incidental expenses. Said expenses and any other and further and additional expenses for attorneys, Expenses. clerks, experts, agencies or persons or for any other purpose which said controller may find necessary or proper in the conduct of said inheritance tax department shall be paid out of such moneys as may be appropriated from time to time to the controller for use of said inheritance tax department.

CHAPTER 185.

An act to amend section one thousand three hundred eighty of the Code of Civil Procedure, relating to giving special notices to heirs, devisees, and legatees during the administration of estates of decedents.

[Approved May 5, 1917.]

The people of the State of California do enact as follows:

SECTION 1. Section one thousand three hundred eighty of the Code of Civil Procedure is hereby amended to read as follows: Request for special notice of proceedings.

1880. At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate (including the state controller), whether as heir, devisee, or legatee, or the attorney for such heir, devisee, or legatee, may serve upon the executor or administrator (or upon the attorney for the executor or administrator and file with the clerk of the court wherein administration of such estate is pending), a written request, stating that he desires special notice of any or all of the following mentioned matters, steps or proceedings in the administration of said estate, to wit:

- (1) Filing of petitions for sales, leases or mortgages of any property of the estate.
- (2) Filing of accounts.
- (3) Filing of petitions for distribution.
- (4) Filing of petitions for partition of any property of the estate.

Such request shall state the post-office address of such heir, devisee, or legatee, state controller, or his attorney, and thereafter a brief notice of the filing of any of such petitions or accounts, except petitions for sale of

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perishable property or other personal property, which will incur expense or loss by keeping, shall be addressed to such heir, devisee, or legatee, state controller, or his attorney, at his stated post-office address, and deposited in the United States post office with the postage thereon prepaid, within two days after the filing of such petition or account; or personal service of such notices may be made on such heir, devisee, or legatee, state controller, or his attorney, within said two days and such personal service shall be equivalent to such deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition or account. If upon the hearing it shall appear to the satisfaction of the court that the said notice has been regularly given, the court shall so find in its order or judgment and such judgment shall be final and conclusive upon all persons.

CHAPTER 505.

An act to amend section nine hundred sixty-three of the Code of Civil Procedure, relating to cases in which an appeal may be taken.

[Approved May 17, 1917.]

The people of the State of California do enact as follows:—

SECTION 1. Section nine hundred sixty-three of the Code of Civil Procedure is hereby amended to read as follows:

963. An appeal may be taken from a superior court in the following cases:

1. From a final judgment entered in an action, or special proceeding, commenced in a superior court, or brought into a superior court from another court;

2. From an order granting a new trial in an action or proceeding tried by a jury where such trial by jury is a matter of right, or granting or dissolving an injunction, or refusing to grant or dissolve an injunction, or appointing a receiver, or dissolving or refusing to dissolve an attachment, or changing or refusing to change a place of trial, from any special order made after final judgment, from any interlocutory judgment, order, or decree, hereafter made or entered in actions to redeem real or personal property from a mortgage thereof, or lien thereon, determining such right to redeem and directing an accounting; and from such interlocutory judgment in actions for partition as determines the rights and interests of the respective parties and directs partition to be made, and interlocutory decrees of divorce.

3. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale or conveyance of real property, or settling an account of an executor, administrator or guardian, or refusing, allowing or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, or legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser or appraisers setting apart a homestead; from an order, judgment or decree fixing inheritance tax or determining that no inheritance tax is due.

Cases in
which an
appeal may
be taken.

INHERITANCE TAX LAW.

RATES AND EXEMPTIONS.

From March 23, 1893, to July 1, 1905.

Statutes 1893, chapter CLXVIII, in effect March 23, 1893:

Exempted—All bequests to “father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of California, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations, and institutions now exempted by law from taxation,” and any other bequest valued at less than \$500, were exempt.

Taxed—All other bequests, amounting to \$500 or more, taxable at five per cent.

Statutes 1895, chapter XXVIII, in effect March 9, 1895; made no changes in rates and exemptions.

Statutes 1897, chapter LXXXIII, in effect March 9, 1897:

Same as above, but added to the exempt class: “any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person society, corporation, institution, or associations of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose.” Also added to the exempt class: “niece or nephew when a resident of this state.” *Estate of Johnson*, 138 Cal. 532, held, that section 2 of article IV of the constitution of the United States, providing that “the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states” extended the exemption to all nieces and nephews resident of any state of the United States.

Statutes 1899, chapter LXXXV, in effect March 14, 1899:

Abolished the exemptions in favor of brother, sister, niece or nephew.

Statutes 1903, chapter CCXXVIII, in effect March 20, 1903:

Added to exempt class “lineal ancestors” and also “any person to whom the deceased for not less than ten years prior to death, stood in the mutually acknowledged relation of a parent.”

As to rates and exemptions under 1905, 1911, 1913, 1915, and 1917 acts, see tables following:

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Table of Rates and Exemptions Under Law of 1905.

In effect July 1, 1905.

Classification or indication of relationship	Property exemption	Application of rates to value of inheritance or bequests			
		On excess after deduction of exemption of \$25,000 to \$50,000 from \$25,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, legal issue, legal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$10,000. Others, \$1,000.}	1%	1½%	2%	2½%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,600	1½%	2¼%	3%	3½%
Uncle, aunt, or descendant of either-----	\$1,500	3%	4½%	6%	7½%
Grand uncle, grand aunt, or descendant of either-----	\$1,000	4%	6%	8%	10%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	7½%	10%	12½%
					15%

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Table of Rates and Exemptions Under Law of 1911.

In effect July 1, 1911.

Classification or indication of relationship	Property exemption	Application of rates to value of inheritance or bequests			
		On excess after deduction of exemption from \$25,700	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$34,000. Others, \$10,000.	1%	2%	3%	4%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,600	2%	4%	6%	8%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%
Grand uncle, grand aunt, or descendant of either.	\$1,400	4%	8%	12%	16%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%

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Table of Rates and Exemptions Under Law of 1913.
In effect August 15, 1913.

Classification or indention of relationship	Property exemption	Application of rates to value of inheritance or bequests					
		On excess after deduction of exemption from \$25,000	\$25,000 to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	\$500,000 to \$1,000,000	\$1,000,000 to \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mentally acknowledged child.	Willow or minor child, \$2,000. Others, \$10,000.	1%	2%	3%	4%	5%	10%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	2%	4%	6%	8%	10%	15%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%	15%	20%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	8%	12%	16%	20%	25%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25%	30%

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Table of Rates and Exemptions Under Amendment of 1915 and 1917.

In effect August 8, 1915.

Application of rates to value of inheritance or bequests						
Classification or indication of relationship	Property exemption	On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$109,000	\$100,000 to \$200,000	\$200,000 to \$500,000 and to \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$24,000. Others, \$10,000.	1%	2%	4%	7%	10% 12% 15%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	3%	6%	9%	12%	15% 20% 25%
Uncle, aunt, or descendant of either.	\$1,000	4%	8%	10%	15%	20% 25% 30%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25% 30% 35%

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HOW TO COMPUTE TAX UNDER NEW LAW.

The following example will indicate the proper method of computing the tax, as provided by chapter 589, Statutes 1917, as herein printed. It will be noted that the exemption is to be deducted from the first \$25,000. This method of computation has been approved by the Supreme Court of the State of California in *Estate of Bull*, 153 Cal. 715; and in *Estate of Timken*, 158 Cal. 51:

EXAMPLE.

Name and relationship	Inheritance or transfer	Computation	Tax
Ann Smith, widow-----	\$1,024,000 00	\$24,000 00 exempt 1,000 00 at 1%-- 25,000 00 at 2%-- 50,000 00 at 4%-- 100,000 00 at 7%-- 300,000 00 at 10%-- 500,000 00 at 12%-- 24,000 00 at 15%--	\$10 00 500 00 2,000 00 7,000 00 30,000 00 60,000 00 3,600 00
Henry Smith, adult son-----	30,000 00	\$10,000 00 exempt 15,000 00 at 1%-- 5,000 00 at 2%--	\$150 00 100 00
Janet Smith, sister -----	10,500 00	\$2,000 00 exempt 8,500 00 at 3%--	250 00
William Smith, uncle -----	8,000 00	\$1,000 00 exempt 7,000 00 at 4%--	255 00
Ernest Harmon, stranger -----	2,500 00	\$500 00 exempt 2,000 00 at 5%--	280 00 100 00
Value of estate-----	\$1,075,000 00	Total tax -----	\$103,995 00

Under the laws of 1905, 1911, 1913, and 1915, the method of computation is the same, but the rates and exemptions are, of course, different.

Citations from Decisions of the California Supreme and Appellate
Courts affecting Inheritance Tax Laws.

DECISIONS OF SUPREME COURT AFFECTING INHERITANCE TAX LAWS.

Estate of Wilmerding, 117 Cal. 281.

Decedent, by his last will and testament, left various legacies to brothers and sisters, and also a legacy of \$200,000 to his nephew. Under the inheritance tax act of 1893, then in force and effect, a tax was assessed against the nephew, but the brothers and sisters were exempted therefrom. *Held*, that this discrimination was not unconstitutional nor prohibited by section 1386 of the Civil Code.

"The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary dispositions, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."

* * * * *

"There is, however, no necessary connection between inheritance and taxation, and, in making laws relating to these two subjects, the legislature is not required to consider them together. Having plenary authority in reference to each, it is not required to shape its legislation concerning one in the form or with any regard to the manner in which it has shaped it concerning the other."

Estate of Stanford, 126 Cal. 112.

Leland Stanford, who died June 21, 1893, by his will gave a certain sum of money for the benefit of Stanford University, and also certain legacies to his nephews and nieces. The inheritance tax statute of 1893 taxed such transfers. The payment of the tax was contested, and while the matter was still in litigation the above statute was amended exempting from the tax nieces or nephews, when a resident of this state, along with certain classes of charitable corporations, of which the above named university is one.

The amendatory act contains an independent section reading as follows: "The exemption contained in this act shall apply to all property which has passed by will, succession or transfer, since the approval of the act of which this act is amendatory, except in those cases where the tax has been paid to the treasurer of the proper county."

The court held that the right of the state to an inheritance tax vested at the death of the decedent and any statute passed subsequent to such death which waived the vested right of the state is unconstitutional; that the state's ownership of such tax does not depend upon its payment, or possession thereof by the state, but only upon its right of possession which occurred at the death of decedent.

Estate of Mahoney, 133 Cal. 180.

Estate of Stock, 135 Cal. XIX.

The decedent left all his estate by will to his ten nephews and nieces, all of whom are non-residents of the State of California. They were taxed and from this tax appealed.

"The amendment of 1897 of the collateral inheritance statute, so far as it relates to nieces and nephews, is in conflict with the provisions of section 2 article IV of the constitution of the United States, providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states, as well as with section 1978 of the United States Revised Statutes, providing that all citizens of the United States shall have the same right in every state as is enjoyed by the white citizens thereof to inherit property, and for that reason the

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amendment in that respect is void, and should be disregarded, thus leaving nieces and nephews subject to the collateral inheritance tax, as they were before said attempted amendment."

(*Estate of Stock*. Decree affirmed on the authority of *Estate of Mahoncy*, above. Not reported, but see XXII Cal. Dec. 1237.)

Estate of Johnson, 139 Cal. 532.

In this case there were two appeals, one taken by resident nieces and nephews and the other by non-resident nieces and nephews, citizens of sister states, from an order assessing inheritance tax against them, on the ground that the Statutes of 1897, page 77, contained an amendment exempting "nieces or nephews when a resident of this state," and that the effect of this amendment is to relieve not only nieces and nephews, resident of this state, but also nieces and nephews resident of other states of the Union, and the supreme court so held.

The *Estate of Mahoncy*, 133 Cal. 180, was reversed, and the amendment exempting nieces and nephews resident of this state held to be constitutional and not in violation of section 2 of article IV of the constitution of the United States, nor of section 1978 of the Revised Statutes of the United States; and that said section of the constitution declaring that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states" does not strike down or limit the right of a state to confer such immunities and privileges upon its own citizens; that the clause of the constitution is protective merely and not destructive nor even restrictive.

"It nowhere intimates that an immunity conferred upon citizens of a state, because not in terms conferred upon citizens of sister states, shall therefore be void."

* * * * *

"It leaves to the state perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all the other states, by virtue of the constitutional enactment itself, the same rights, privileges, and immunities."

* * * * *

"It is a canon of construction that an act of the legislature will yield to the constitution so far as necessary, but no further. The constitutional immunity goes only to citizens of sister states, and there is a clear distinction thus recognized between citizens of the states and citizens of the United States who are not citizens of any state, as well as citizens of alien states. By virtue of the constitution of the United States, the immunity which the legislature by the amendment of 1897 conferred upon citizens of this state is extended to citizens of sister states, but the immunity goes no further. Citizens of territories, of the District of Columbia, and of our new possessions, as well as aliens, are not exempted, and their property is thus liable for the tax."

Estate of Winchester, 140 Cal. 468.

Decedent left property to children of an adopted daughter. Among those excepted from the provisions of the inheritance tax law of 1893 which was then in force and effect, in addition to father, mother, husband, wife, lawful issue, etc., were "any child or children adopted as such in conformity with the laws of the State of California" and also "any lineal descendant of such decedent."

It was held that as the word "issue" includes all descendants and the statute gives to an adopted child the status of a descendant, children of an adopted child come within the meaning of the excepted classes.

Estate of Campbell, 143 Cal. 623.

The above named estate was distributed to the brothers and sisters of the deceased, and upon appeal it is contended that the amendment of 1899 to the collateral inheritance tax law is unconstitutional because it imposes a tax upon the brothers and sisters of deceased persons, while at the same time exempting from taxation the wife of a son, the widow of a son and the husband of a daughter.

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The court held the provisions constitutional on the ground that it applied equally to all persons embraced in a class founded upon some natural or intrinsic, or constitutional distinction. The class composed of sons-in-law and daughters-in-law, though not of blood of the testator, are very closely related by affinity, and the legislative discretion should not be interfered with on the ground that the distinction is not natural.

County of San Diego vs. Schwartz, 145 Cal. 49.

Section 20 of the collateral inheritance tax law, giving the treasurer of each county a commission on all sums collected thereunder in addition to his salary, though not wholly repealed, has been so far modified by the county government acts of 1893 and 1897 that the commissions can not be received by the county treasurer individually to his own use, but must be paid into the treasury of the county.

Trippet vs. State of California, 149 Cal. 521.

Jacob Gruendike died April 8, 1905, and disposed of his property to certain legatees. The statute of 1893 was in force at that time.

The legislature of 1905, instead of amending the old act, undertook to pass a new law covering the whole subject, and there is no clause expressly saving or preserving rights accrued under the old law. It is contended, firstly, that in view of the fact that prior to the repeal of the act of 1893, no proceedings had been taken to collect the tax, the repeal absolutely foreclosed the rights of the state. It is contended, secondly, that the act of 1893, having been construed as vesting a five per cent interest in the state at the death of the decedent, deprives persons of property without due process of law.

Held, answering the first contention, that the right of the state to a tax under the law of 1893 vested on the death of the decedent according to the *Estate of Stanford*, and could not be surrendered by legislative act. Answering the second contention, the court held that the vested right of the state is subject to appraisal after notice to all parties known to have or claim an interest in the property, and the tax is fixed from the report of the appraiser; that the tax vests, but that possession is contingent on the performance of the above acts.

Estate of Woodard, 153 Cal. 39.

"Under the will of deceased, his brother was entitled to the whole estate, and the sole question presented by counsel for the appellant is, to what act of the legislature must we look to determine the amount of collateral inheritance tax to be paid by those succeeding to the estate? That question is answered by two decisions of this court (*Estate of Stanford*, 126 Cal. 112 [54 Pac. 259, 58 Pac. 462]; *Trippet vs. State*, 149 Cal. 525 [86 Pac. 1084]). It is the act in force at the time of the death of the deceased that must govern. At the time of the death of the deceased, the act in force was that of March 20, 1903 (Stats. 1903, p. 268), under the provision of which the tax upon property passing to a brother was five per cent. The lower court erroneously proceeded upon the theory that the act of 1905 (Stats. 1905, p. 341), which fixed such tax at one and one-half per cent, was applicable.

Estate of Martin, 153 Cal. 225.

Elizabeth Hewlett Martin died January 2, 1905. She bequeathed to each of appellants a sum of money greater than \$500. None of the appellants was related to the deceased in a degree nearer than brother, and hence, the legacies were taxable under the act of 1893 as amended in 1903. The act of 1905 purported to repeal the act of 1893 and all amendments thereto. This appeal is from an order of the superior court directing the executor of the estate to deduct from each legacy a sum equal to five per cent thereof as and for an inheritance tax.

Held, that the act of 1905, although it expressly repealed the act of 1893, and its amendments, re-enacted in substance the provisions of procedure under the former act; such re-enactment neutralizes the repeal in so far as the old law is continued

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in force; and the part of the old law re-enacted operates without interruption. Consequently taxes vesting under the law of 1893 could be collected after 1905 under the procedure of 1893 which was still in operation.

Estate of Moffitt, 153 Cal. 359.

The widow's half of the community property is taxable. She takes her share upon the death of her husband by succession as his heir and consequently the transfer comes within the provisions of the inheritance tax act taxing "all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same."

(This case was appealed to the United States Supreme Court, where it was held that the nature and character of the right of the wife in the community property for the purposes of taxation was peculiarly a local question which the Federal court had no right to review. See *Moffitt vs. Kelley*, 218 U. S. 401.)

Estate of Sims, 153 Cal. 365.

Same question raised as in *Estate of Moffitt* and decision there given affirmed.

Estate of Bull, 153 Cal. 715.

In estimating the inheritance tax under the 1905 act on estates over \$25,000, the primary rate of one per cent should be collected on the excess over the exemption up to \$25,000.

Section 2 of the act does in terms and in fact relate exclusively to estates not exceeding \$25,000 in value. It imposes a tax on the unexempt portion of that sum of from one to five per cent, according to the degree of relationship of the devisee or heir to the decedent. Section 3 imposes a tax on the excess over \$25,000 in the case of all estates exceeding that valuation but does not omit the first \$25,000 but imports the provisions of section 2.

Estate of Kennedy, 157 Cal. 517.

Appeal from an order fixing the amount of inheritance tax to be paid by Mrs. Kennedy under the provisions of the act of March 20, 1905 (Stats. 1905, p. 341). Deceased gave by will all his property to his wife. Under provisions of sections 1464 and 1465, Code of Civil Procedure, a family allowance was paid to the widow and a probate homestead set apart to her absolutely. The real question is whether the act purports to impose a tax as to property of a decedent disposed of in the course of administration as was this property.

Held, probate homestead and family allowance do not pass by will or by the intestate laws of this state (the two transfers made taxable by the 1905 statute) but by order of the court and are therefore not taxable transfers. The title comes not from the will or from the intestate laws, but from the order of the court. The right to a homestead and a family allowance is bestowed by the beneficence of the law of this state for the benefit of the family of the decedent.

Estate of Gird, 157 Cal. 534.

Upon a petition for partial distribution of an estate at the expiration of four months, it is erroneous to distribute all of the property of the estate, simply reserving bonds to secure debts. Enough property should be reserved not only to cover the entire debts and expenses of administration, but also to secure the payment of the inheritance tax by the distributees.

Estate of Timken, 158 Cal. 51.

In computing the amount of the inheritance tax imposed by the act of 1905 the exemptions allowed by section 4 thereof must be deducted from the first \$25,000, even though the estate exceed that sum, rather than from the entire gift; and the excess over the exemption up to \$25,000 must be taxed at the primary rate.

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Estate of Hite, 159 Cal. 392.

The executor of the will misappropriated \$98,991.10 belonging to the estate of the deceased, which sum never came into the hands of the administrator with the will annexed. The whole of said sum was lost to the estate by reason of such misappropriation. By order of the lower court the tax on this amount was imposed wholly on the residuary legatees. This is the only question on appeal.

Held, property misappropriated by an executor and lost to the estate is nevertheless taxable under the 1905 inheritance tax act. It is only property that is lawfully divested that is not taxable. The tax assessed on the value of the property as of the time of the death, and any subsequent appreciation or depreciation is immaterial.

McDougald vs. Low, 164 Cal. 107.

The decedent died domiciled in the State of New York, where his will was duly admitted to probate and where he left a large estate. He also owned shares of stock in three several California corporations. All debts were proved against the estate in the probate proceedings had in the State of New York. There were no debts owing to California creditors, and the estate in New York greatly exceeded the entire debts and expenses of administration. The lower court held that the property in California subject to the inheritance tax should bear its proportion of the debts proved in New York and the expenses of the administration of the estate of decedent in New York.

Held, in determining the inheritance tax on the transfer of property passing in kind by the will of a nonresident decedent to the residuary legatees, and having its *situs* in this state, no deductions should be made on account of any debts proved or expenses incurred in the state of the testator's domicile, where said decedent left no creditors in this state and where the property at his domicile is ample to pay all debts and expenses of administration there incurred. For the purposes of the inheritance tax law, the *situs* of stock in a corporation is in the state of the incorporation.

Estate of Rossi, 169 Cal. 148.

Where a testator by his will leaves one-half of his property to his wife and the other half to his sons and daughters, and the estate is all community property, and there is nothing in the will to indicate an intention to make the testamentary gift to the widow stand in lieu of her community interest, she takes three-fourths of the entire community property, and is chargeable with inheritance tax on such three-fourths, notwithstanding the filing of a "waiver" of her rights to anything over one-half of the estate. The right of the state to an inheritance tax, based upon three-fourths of the estate, vested upon the death of the testator, and could not be affected by any subsequent arrangement that might be made by the heirs.

Estate of Reynolds, 169 Cal. 600.

Under the inheritance tax act of 1905 (Stats. 1905, p. 341), as amended in 1911 (Stats. 1911, p. 713), imposing a tax upon the transfer of any property, "when the transfer is of property * * * by deed, grant, bargain, sale, assignment, or gift, made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor," and providing in section 27 thereof, that "the words 'contemplation of death,' as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift *causa mortis*," certain gifts made by a husband to his wife, at a time when he was suffering from a mortal disease, and had full knowledge of the character of his ailment, the first of which was made two days before he underwent a grave surgical operation, and the other of which was subsequently made after a recurrence of the disease and about five months before his death, must be considered as made in contemplation of death, within the meaning of the act, and liable to the tax thereby imposed.

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A transfer made by such person to his son, about four months before his death, of a department store and its contents, valued at upwards of one hundred thousand dollars, upon the son's agreeing to assume the indebtedness of the business, amounting to about thirty thousand dollars, and to pay the father six hundred dollars a month during his life, is not for "a valuable and adequate consideration," within the meaning of such inheritance tax law, and is likewise liable to the tax thereby imposed.

Estate of Haskins, 170 Cal. 267.

The duties of an inheritance tax appraiser, differing from those of general probate appraisers are to report on the character and probable value of so much of the estate as is liable for the inheritance tax and to determine whether transfers have been made by the decedent which are subject to inheritance taxation. A hearing of a report of the inheritance tax appraiser before the probate court upon notice, a determination by the court after such hearing, and an authorization to the county treasurer to receive the inheritance tax when such formal proceedings have been taken, is provided by the law, and independently of whether the state sustains any loss through a course followed by the court differing from this, the state controller is entitled to insist that the procedure as outlined by the statute be followed. An order of final distribution made and later amended *nunc pro tunc* determining the amount of the inheritance tax, although the amount be correct, will not prevent the controller from insisting on the statutory course.

The court in probate appoints three appraisers of whom one must be a regularly constituted inheritance tax appraiser. The court must appoint one inheritance tax appraiser but need not appoint more than one. If the inheritance tax appraiser fails to act with the probate appraisers, the expenses of making the inheritance tax appraisement are payable out of the funds of the estate. To avoid this expense an executor or administrator may well see to it that the inheritance tax appraiser acts with the probate appraisers. (Affirming *Estate of Reynolds*, 169 Cal. 600.)

Estate of Hodges, 170 Cal. 492.

The provisions of the inheritance tax law of California (Stats. 1905, p. 350), requiring the payment of an inheritance tax upon personal property situated in Massachusetts, belonging to a decedent residing in California, whose will was probated originally in California and by ancillary administration in Massachusetts, in which latter jurisdiction the property was distributed, are not in violation of the fourteenth amendment to the constitution of the United States as amounting to a deprivation of property without due process of law.

The fact that the state where the property is situated has also imposed a tax upon the succession of the property does not render the tax by the state of the domicile of the decedent a violation of the federal constitution as double taxation, although it may result in hardship.

The law of the domicile of a decedent governs the succession of his personal property wherever situated.

Estate of Ida Hancock Ross, 171 Cal. 64.

The state appealed from an order of the superior court of Los Angeles County placing a valuation of \$3,350,000 for inheritance tax purpose upon a tract of over 2,000 acres of land adjoining the city of Los Angeles on the grounds chiefly:

- (1) That the valuation was lower than authorized by the evidence.
- (2) That the state in its examination in chief was not permitted to prove the prices at which other similar property in the neighborhood had been actually sold, at or near the time of the death of the decedent.
- (3) That the trial court refused to allow the state's witnesses on direct examination to give the reasons for their opinions.

The court held:

- (1) That a finding of fact upon a substantial conflict in the evidence will not be reviewed upon appeal and that there was substantial evidence in sustaining even a lower valuation.

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(2) That party calling a witness to give his opinion on value may qualify him by showing his familiarity with the property and with other property in the neighborhood, his experience in the business, his familiarity with the state of the market and with sales of similar property in the vicinity, and any other facts tending to show his knowledge of the subject and capacity to give an opinion thereon. But while the fact that he knows of sales made and of the prices obtained may be elicited, the prices given in any particular instance are not admissible, except as stated, on the cross-examination of the opposing party, if he sees fit to make the inquiry.

(3) That before the close of the trial, respondents withdrew their objections and offered appellant an opportunity to recall their witnesses and to ask them to give the reasons for their opinions; that appellants refused the offer; and this record does not show that the court denied appellant this right to avail itself of this offer.

Estate of McCahill, 171 Cal. 482.

Under the inheritance tax law of 1911 (Stats. 1911, p. 713), it was not the intention of the legislature to impose a tax upon the transfer by succession of the property of a nonresident, unless it was "property within the state," at the time of the death of the decedent.

Bonds of foreign corporations not doing business in this state, which belonged to a nonresident, and were not brought to nor kept within this state for any local business purpose, do not constitute property within the state, within the purview of the inheritance tax law of 1911, by reason of the mere fact that the bonds themselves were, at the time of the death of the owner, physically present in a safe deposit box within this state.

McDougald vs. Boyd, 172 Cal. 753.

Where a husband and wife at the time they opened two joint accounts in a bank signed an agreement with the bank to the effect that the money deposited was to be held on the understanding and condition that the same and all accumulations thereof should be payable to the husband and wife, or either of them, during their joint lives and should belong absolutely to the survivor of them, the deposits thereby became the property of the husband and wife as joint tenants, under the express declaration of section 16 of the Bank Act as it existed in 1909 (Stats. 1909, p. 90), and the wife surviving her husband did not take any interest in the deposit as his heir or successor, but by virtue of her estate originating at the time of the creation of the joint tenancy; and the imposition of an inheritance tax upon the deposits, under the inheritance tax statute as it existed in 1911 (Stats. 1911, p. 713), can not be sustained upon the theory that they formed a part of the estate of the husband, passing upon his death to his wife.

The inheritance tax statute as it existed in 1911 did not impose a tax, generally, upon transfers made in contemplation of death or intended to take effect in enjoyment after death, but only upon such transfers when made "without valuable and adequate consideration," and the absence of the consideration is just as essential to the obligation to pay the tax as is the contemplation of death, or the intention of the transferrer that possession or enjoyment shall be postponed until death; and the burden is on the officer seeking to recover a tax under subdivision 3 of section 1 of said act to show that there was not a valuable and adequate consideration for the transfer.

Abstract and Title Guaranty Co. vs. State of California, 173 Cal. 691.

In an action against the state, brought under the provisions of subdivision "A" *et seq.* of section 29 of the inheritance tax law of 1905 (Stats. 1905, pp. 341, 351), to quiet the plaintiff's tax title against the state's claim of lien of an inheritance tax, in which the defendant averred that the deed upon which plaintiff's claim of title was founded had been made by the grantor in contemplation of death and in lieu of a testamentary disposition of the land, evidence is admissible on behalf of the defendant to show the value of the property deeded. The exclusion of such evidence does not

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render unsupported a finding of inadequacy of consideration where it was shown by the plaintiff's own witnesses, that the land was of a greater value than five hundred dollars, and therefore not exempt, under proper conditions, from an inheritance tax.

The words "contemplation of death," as used in the inheritance tax law of 1905 imposing a tax on transfers of property made in contemplation of death, should not be construed in the limited sense of that expectancy which actuates a person in making a gift *causa mortis*. In determining whether a transfer was so made, the adequacy of the consideration is an essential element to be considered. (Affirming *Estate of Reynolds*, 169 Cal. 600.)

Hunt vs. Wicht, 53 Cal. Dec. 64.

The act of April 7, 1911 (Stats. 1911, p. 733), providing for a tax on any transfer by deed "made without valuable and adequate consideration in contemplation of the death of the grantor * * * , or intended to take effect in possession or enjoyment at or after such death," when the party taking "becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of such act," is not applicable to a deed made by a husband to his wife prior to the passage of such act, where such deed was immediately delivered to a third party with instructions to deliver it to the grantee named therein on the death of the husband, notwithstanding that his death occurred after the passage of the act.

Where a conveyance is made and placed in the hands of a third party with instructions to deliver it to the grantee named therein on the death of the grantor, and it is the intention of the grantor to make the delivery absolute and place the deed beyond all power to thereafter revoke or control it, *the title to the property presently passes*, subject to a life estate in the grantor, and there is no transfer of any property in any legal sense upon his death and the consequent termination of his life estate.

Estate of James Stewart, 53 Cal. Dec. p. 317.

Homestead property, title to which is transferred to the widow by and on the death of her husband, is liable to an inheritance tax under the provisions of section 2 of the inheritance tax law of 1913.

McDougald vs. Lilienthal, 53 Cal. Dec. 422.

Shares of stock in a California corporation owned by a nonresident of this state and distributed to his heirs under the laws of succession of the state of his residence are subject to the inheritance tax imposed by the laws of this state, and the distributees can not take full title to the stock until such tax is paid, regardless of the fact that the certificates evidencing the ownership of such shares of stock were kept by the deceased in the state of his residence and that no probate proceedings were had in this state.

Under section 1 of the inheritance tax act of 1905, not only all property passing by will or the intestate laws of this state, is subject to the tax, but also all property of a nonresident, which, regardless of its mode of transfer or succession, shall be within this state.

Shares of stock in a domestic corporation are subject to the tax at the domicile of the corporation on their transfer by will or under its intestate laws, although the decedent was a nonresident and this without regard to the place where the certificate may be kept. The imposition of such tax is not violative of the full faith and credit clause of the constitution of the United States.

Kelly vs. Woolsey, 54 Cal. Dec. 140.

Under the collateral inheritance tax law of 1905, which provided for the imposition of a tax upon all property transferred in contemplation of death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, real property conveyed by a grantor to her niece is subject to the payment of the tax, where the deeds therefor were executed without consideration, other than

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love and affection, and not delivered to the grantee until after the death of the grantor, but handed to her business agent with instructions to deliver "at the proper time," and the grantor thereafter in her lifetime continued in the full exercise and enjoyment of the property, receiving and expending the income, making leases, living upon it, and in every way exercising dominion and enjoyment over it.

Under the provision of such act, a gift of money on deposit in a bank is subject to the payment of the tax, where the same was effected by changing the form of the account from an individual deposit to a joint account payable to the donor or donee with right of survivorship, and the donor thereafter in her lifetime continued to make deposits and withdrawals thereon.

The collateral inheritance act of 1905 makes the intent of the donor or grantor an element to be considered in determining whether or not the property is subject to the imposition of the tax.

The policy of the inheritance tax law will not permit the owner of real or of personal property to defeat the plain provisions of the law by any device which secures to him for life the income, profits and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title and the enjoyment in the grantor's lifetime.

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DECISIONS OF APPELLATE COURTS AFFECTING INHERITANCE TAX LAWS.

Estate of Chesney, 1 Cal. App. 30.

The decedent by her last will and testament bequeathed \$500 to respondent. A petition was filed by respondent asking that distribution be made to her of said legacy. The executors in their answer set forth as a defense that they had insufficient funds available to pay the legacy, and to sustain this allegation set forth among other things that the estate in their hands was subject to an inheritance tax on the several bequests made in the will.

The court, in this connection, said: "In determining the amount of money in the hands of the executors available for the payment of the respondent's legacy, the court was not required to take into consideration the amount of the collateral inheritance tax. Such tax is not one of the expenses of administration or a charge upon the general estate of the decedent, but is in the nature of an impost tax upon the right of succession and is imposed upon the several amounts of the decedent's estate to which the successors thereto are respectively entitled."

Cross vs. The Superior Court, 2 Cal. App. 342.

James T. Cross died in January, 1905. The petitioner would be liable to pay an inheritance tax, under the act of 1893, if said act is still in force. By an act of the legislature which took effect July 1, 1905, another and different inheritance tax act was passed, which expressly repealed the act of 1893. This is an application for a writ of prohibition to be directed to the superior court to stay proceedings to enforce collection of the inheritance tax.

Held, an appeal lies from the order of the superior court directing the payment of an inheritance tax or from a decree of final distribution directing the deduction of the tax. Consequently, there is a plain, speedy, and adequate remedy in the ordinary course of law, and a writ of prohibition to arrest the proceedings of a tribunal will not lie in such cases.

Estate of Lander, 6 Cal. App. 744.

The deceased died before the act of 1905 went into effect and no steps had been taken by the state to collect the tax imposed by the law in force at the date of the death.

In discussing the effect of the act of 1905, which purported to repeal the act of 1893, the court held that the right to a collateral inheritance tax under the act of March 23, 1893, which became vested at the death of a deceased person, could not be surrendered by a subsequent legislative act, and is unaffected by the repeal of that act by the statute of 1905, and the estate can not be distributed to their heirs without payment of the vested tax, which must appear in the final account of the administrator.

Becker vs. Nyc, 8 Cal. App. 129.

Petition for writ of mandate to compel the state controller to countersign receipt for inheritance tax. The court held that the law contemplates the payment of the tax by any legatee or heir of the amount due from him, so that he may presently come into possession of his legacy or inheritance, and the receipt attesting its payment should be countersigned by the controller, and should be allowed in the executor's account. The controller has no judicial discretion by which he may exercise the right to refuse to countersign a receipt as directed by the statute. "In countersigning the receipt the controller decides nothing, nor should the receipt be so framed as to bind the state, or to conclude its right to have the question reviewed on appeal should the state desire to appeal from the action of the court." A writ of mandate lies in proper cases to compel the controller to countersign the receipt for the inheritance tax.

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Estate of Damon, 10 Cal. App. 542.

The appeal is from an order of the superior court of the city and county of San Francisco directing the widow, sole devisee, to pay \$1,172 "inheritance tax," under the act of the legislature approved March 20, 1905. Appellant's only contention is that said law is repugnant to the constitution of the state and especially to the fourteenth amendment of the constitution of the United States. The argument is based on the theory that there is a discrimination between the citizens of this state and those of other states, but it does not appear to which class appellant belongs, and hence it can not be determined that appellant is an aggrieved party.

Held, that the constitutionality of the inheritance tax act can not be assailed by one who does not claim to be affected adversely.

Wirringer vs. Morgan, 12 Cal. App. 26.

Under the inheritance tax act of 1893, and the amending act of 1899, imposing a tax on collateral inheritances, illegitimate children, acknowledged by their father in accordance with section 1387, Civil Code, were exempt, as such children were not collateral heirs, and any inheritance passing to such a child from its father is not a collateral inheritance.

Estate of Williams, 23 Cal. App. 285.

Abram P. Williams died testate in October, 1911, leaving a will by which he devised his entire estate to his widow. She was appointed executrix, and continued to serve as such until her death. She also left a will in which after numerous legacies, Donald Ward Williams and Harry McFarland Williams were named as the residuary legatees of her estate. An inheritance tax was appraised upon the estate of Abram P. Williams and fixed at the net sum of \$18,475, chargeable against his widow as the sole devisee, which sum was paid. The appraiser in fixing the inheritance tax on the residuary interests of Donald Ward Williams and Harry McFarland Williams declined to deduct from his appraisement of the market value of said interests of said residuary devisees, the amount of the first inheritance tax.

Held, on appeal, when a testator dies, leaving his estate to a devisee who is subject to an inheritance tax, but who dies before the tax is paid, leaving in turn an estate, the residuary legatees of which are also subject to a tax, in estimating the tax on the second estate, the tax first accruing at the death of the original decedent is a proper deduction. The first tax is a lien on the property until paid, and is properly deductible from the second estate in estimating the second inheritance tax.

McDougald vs. Wulzen, 24 Cal. Dec. 967.

Under the inheritance tax law of 1915 deeds of real property made by a husband to his wife can not be said, as a matter of law, to have been made in contemplation of death for the purpose of escaping payment of inheritance taxes, where the grantor at the time of the conveyances, although eighty-three years of age, was in reasonably good health for one of his years, not suffering from any disease and desirous of being relieved from the burden of longer caring for his property, and whose death did not occur until one and one-half years after the execution of the conveyances. (Distinguishing *Estate of Reynolds*, 169 Cal. 600.)

Hancock vs. Hunt, 25 Cal. App. Dec. 329.

In a proceeding instituted to determine the value of the estate of a deceased person for the purpose of fixing the amount of the inheritance tax due thereon, a tender to the state by the person liable for such tax of the amount found due, without any other condition except the delivery of a receipt for the same, pending an appeal taken by the state from the order, is a valid tender, and releases such person from the payment of any interest thereon, notwithstanding the state refused to receive the money except upon condition that it was received subject to the pending appeal.

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Spreckels vs. State of California, 30 Cal. App. 363.

Under the inheritance tax law of 1905 (Stats. 1905, p. 341), whether transfers of property are made "in contemplation of death," or "intended to take effect in possession or enjoyment after the death" of the donor, are questions of fact.

The phrase "in contemplation of death," as used in the 1905 inheritance tax law, relates to transfers made when contemplation of death is the motive which prompts the transfer, and does not have reference to that general expectation of death which is the essential concomitant of the inherent knowledge of the inevitable termination of all life.

Under the inheritance tax law gifts of corporate stock made by a mother to her children at the time when she was of the age of seventy-nine years, and suffering from a serious and dangerous heart affliction which caused her death a few weeks after the making of such gifts, are not made "in contemplation of death," and therefore not subject to taxation, where it appears that the donor often declared her intention of giving the property to the donees *in her lifetime*, and that she at the time of such gifts harbored no thought of immediate death.

CALIFORNIA
CORPORATION LICENSE TAX LAW

[In Effect May 11, 1917]

CORPORATION LICENSE TAX LAW.

CHAPTER 215.

(Statutes 1917.)

An act to amend an act entitled "An act prescribing terms and conditions upon which corporations may transact business in this state and providing penalties and forfeitures for noncompliance," approved May 10, 1915, relating to the terms and conditions upon which corporations may transact business in this state.

[Approved May 11, 1917, in effect immediately.]

The people of the State of California do enact as follows:

SECTION 1. An act entitled "An act prescribing the terms and conditions upon which corporations may transact business in this state and providing penalties for forfeitures for noncompliance," approved May 10, 1915, is hereby amended to read as follows:

Section 1. Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing interstate or intrastate business in this state or maintaining an office herein, and which has not filed with the secretary of state prior to the day on which this act takes effect the document or documents required by this section, or which shall hereafter do such business in this state or maintain an office herein, or which shall enter this state for the purpose of doing such business herein, must file in the office of the secretary of state of the State of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and must also file a certified copy thereof, duly certified by the secretary of state of this state in the office of the county clerk of the county where its principal place of business in this state is located, and also where such corporation owns any real property. With such certified copy of its articles of incorporation, charter, or legislative, executive or governmental act creating it, such corporation shall also file with the secretary of state an affidavit sworn to by the president or secretary of such corporation, which shall state the amount of such corporation's authorized capital stock at or within fifteen days prior to such filing. Every such corporation shall pay to the secretary of state for filing in his office such certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, a fee of seventy-five dollars; *provided*, that foreign corporations organized for educational, religious, scientific or charitable purposes and having no capital stock, and foreign nonprofit corporations shall pay a fee of five dollars for filing the document or documents hereinabove required.

Foreign corporations shall also file any amendment of or change in any of the provisions of its original articles of incorporation, or charter, or of the statute or legislative, executive or governmental act or acts creating it. Every foreign corporation subject to the tax hereinafter provided shall file with the secretary of state, at the time it tenders payment of said tax and any penalty which has accrued, an affidavit sworn to by its president or secretary, showing the amount of its authorized capital stock on the first day of January of the year in which

Stats. 1915,
p. 422.

Corporations
may file
articles of
incorporation.

Certified
copy filed
with county
clerk.

Affidavit as
to capital
stock.

Filing fee.

Fee for
foreign
corporation.

Affidavit as
to capital
stock.

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said payment is made, and in the event that such authorized capital stock, as shown by such affidavit, differs from the amount of such capital stock as appears from the records of the secretary of state, then the tax hereinafter provided shall be measured by the amount of the capital stock shown in such affidavit. The license hereinafter required shall not be issued nor shall the amount so tendered be accepted until copies of any documents relating to such change in authorized capital stock, certified as required by this section, shall have been filed with the secretary of state.

Designation of agent.

Every foreign corporation shall file with the secretary of state a designation of some person residing within this state upon whom process issued by authority of law may be served as the representative, for such purpose, of such corporation. A copy of such designation certified by the secretary of state is sufficient evidence of the appointment of such representative. Such process may be served on the person so designated, or, in the event that no such representative is designated, then on the secretary of state, and such service shall be a valid and binding service on such corporation.

Service of process.

Conditions as to suits at law.

Every corporation which complies with the provisions of this section is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but any corporation created by or under the laws of any foreign state or country and that has not complied with this section is not entitled to the benefit thereof, nor can any such foreign corporation maintain or defend any action or proceeding concerning its property in this state or any intrastate business or transaction, in any court of this state or acquire or convey any legal title to any real property within this state. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases.

De facto corporations.

Every corporation which has complied with the law requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this section; *provided, however,* that any foreign corporation which, prior to the eighth day of March, one thousand nine hundred one, shall have complied with the provisions of the act entitled, "An act to amend 'An act in relation to foreign corporations,' approved April first, one thousand eight hundred seventy-two," approved March seventeenth, one thousand eight hundred ninety-nine, shall, in lieu of the provisions of this section above set forth, file the affidavit and designation of representative herein required and the license tax due from such corporation shall be measured by the authorized capital stock, as shown thereby.

Proviso as to filing articles.

Sec. 2. Upon filing in the office of the secretary of state the certified copy of articles of incorporation of corporations organized under the laws of this state, there shall be paid to the secretary of state the fees prescribed therefor by section four hundred nine of the Political Code.

Fees of secretary of state.

Sec. 3. Except those corporations hereinafter specified, every corporation incorporated under the laws of this state, and every corporation incorporated under the laws of any other state, territory, or foreign country

Annual license for intrastate business.

CORPORATION LICENSE TAX LAW.

now doing intrastate business within this state, or which shall hereafter engage in intrastate business in this state, shall procure annually from the secretary of state a license authorizing the transaction of such business in this state, and pay therefor the license tax prescribed herein.

For the purpose of measuring said tax the secretary of state shall examine all articles of incorporation and all documents on file in his office relating to an increase or decrease in the authorized capital stock of corporations which are subject to said tax, and determine the amount due from each corporation by the following rule:

When the authorized capital stock of the corporation does not exceed ten thousand dollars, the tax shall be ten dollars; when the authorized capital stock exceeds ten thousand dollars, but does not exceed twenty thousand dollars, the tax shall be fifteen dollars; when the authorized capital stock exceeds twenty thousand dollars but does not exceed fifty thousand dollars, the tax shall be twenty dollars; when the authorized capital stock exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the tax shall be twenty-five dollars; when the authorized capital stock exceeds one hundred thousand dollars but does not exceed two hundred fifty thousand dollars, the tax shall be fifty dollars; when the authorized capital stock exceeds two hundred fifty thousand dollars but does not exceed five hundred thousand dollars, the tax shall be seventy-five dollars; when the authorized capital stock exceeds five hundred thousand dollars but does not exceed one million dollars, the tax shall be one hundred dollars; when the authorized capital stock exceeds one million dollars but does not exceed three million dollars, the tax shall be two hundred dollars; when the authorized capital stock exceeds three million dollars but does not exceed five million dollars, the tax shall be three hundred fifty dollars; when the authorized capital stock exceeds five million dollars but does not exceed seven million five hundred thousand dollars, the tax shall be five hundred fifty dollars; when the authorized capital stock exceeds seven million five hundred thousand dollars but does not exceed ten million dollars, the tax shall be eight hundred dollars; when the authorized capital stock exceeds ten million dollars, the tax shall be one thousand dollars; when the capital stock of any corporation has no par value the tax shall be one hundred dollars; when part of the capital stock of any corporation has a par value and a part of such stock has no par value, the tax shall be computed upon such par value stock in accordance with the admeasurement schedule herein established, to which sum shall be added the sum of fifty dollars. Stock having no par value. Building and loan companies and associations shall pay an annual license tax of ten dollars.

All corporations having no capital stock, but organized for profit, shall pay an annual tax of ten dollars. Said license tax shall be due and payable to the secretary of state on the first day of January of each and every year. Such license tax shall be paid on or before the hour of six o'clock p.m. of the first Monday of February of each year and if not so paid shall at said hour become delinquent and there shall thereupon be added thereto as a penalty for such delinquency the sum of ten dollars.

Sec. 4. The license hereby provided authorizes the domestic corporations holding the same to transact business in this state, and authorizes foreign corporations to transact intrastate business in this state, during the year or any fractional part of such year for which such license is issued. "Year" within the meaning of this act, means from and including the first day of January to and including the thirty-first day of December next thereafter.

Benefits conferred by license.

Year, meaning of.

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License fees for portions of year.

Sec. 5. At the time any corporation subject to the license tax provided herein shall file certified copy of articles of incorporation, or charter, or statute or statutes, or legislative, or executive or governmental act or acts creating a corporation, when filed between the first day of January and the thirty-first day of December, inclusive, in any year, there shall be paid to the secretary of state, in addition to all other fees required by law, that proportion of the license tax specified in section three of this act which the unexpired number of months of such year bears to the entire year including the month in which such filing occurs, and thereupon the secretary of state shall issue a license for such fractional part of the then current year.

What corporations exempt.

Sec. 6. Corporations organized and conducted solely and exclusively for educational, religious, scientific or charitable purposes, corporations which are not organized or conducted for profit, corporations organized under the laws of any other state, territory or foreign country doing solely and exclusively an interstate or foreign business, and those corporations taxed under subdivisions (a), (b) and (c) of section fourteen of article thirteen of the constitution, are exempt from payment of the tax provided by section three of this act.

License tax exemption board.

Protest.

Sec. 7. The secretary of state, state controller and members of the state board of control shall be and are hereby constituted the "corporation license tax exemption board." Except in cases where articles of incorporation are filed in the month of December, every corporation claiming exemption from the payment of the annual license tax prescribed by this statute must file with said board, at least thirty days before such license tax becomes due and payable, a written protest in which shall be set forth all facts and reasons upon which such exemption claim is made. Such protest shall contain a concise statement of the nature, character and manner of doing business by such corporation, together with any other data illustrating the method of doing such business and the places in which such business is transacted within this state. Such corporation shall furnish to said board such other or additional information as may be required by said board. Such application shall be sworn to by the president, secretary or general manager, or authorized agent of such corporation. Failure to protest in the manner and within the time herein prescribed shall constitute a waiver of all rights of exemption from said tax; *provided, however*, that the corporation license tax exemption board shall have the power, irrespective of such protests to grant such exemption in the case of corporations mentioned in section six of this act.

Exemption as to protest.

The provisions of this section with respect to filing written claim of exemption, shall not apply to educational, religious, scientific or charitable corporations, specified in section six of this act nor to corporations taxed under subdivisions (a), (b) and (c) of section fourteen, article thirteen of the constitution of this state.

Duty of secretary of state on exemption.

Sec. 8. Before filing a certified copy of the articles of incorporation of any domestic corporation in the office of the secretary of state, and before any foreign corporation files with the secretary of state the document or documents required by section one of this act, said articles of incorporation or said documents shall be submitted to said corporation license tax exemption board, which board shall determine the question of whether such corporation is exempt, under any of the provisions of this act, from the license tax imposed hereby.

Act of exemption board final.

All claims or applications for exemption, under this and the preceding section together with all evidence and proofs submitted therewith, shall be considered by such license tax exemption board, which shall determine the question of such exemption. The determination of such corporation

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license tax exemption board upon all questions of fact, with respect to such claims of exemption, shall be final and conclusive.

Sec. 9. On or before the first day of December of each year the secretary of state shall mail a notice to every corporation subject to the tax imposed by this act, notifying such corporations of the time when such tax shall be due and payable, when delinquent, and of the penalties for delinquency and nonpayment. Immediately after the first Monday in February of each year the secretary of state shall mail a notice to every corporation subject to the tax imposed by this act and which has failed to pay the same, notifying such corporation of its delinquency and the penalties therefor. Within ten days after the Saturday preceding the first Monday in March of each year the secretary of state shall, by registered mail, notify every corporation subject to the tax imposed by this act and which has failed to pay the same, that such corporation has been recorded by him as a "suspended" or "forfeited" corporation in accordance with the provisions of this act, and that such suspension or forfeiture may be removed by complying with the provisions of this act. Mailing by the secretary of state to any corporation of any of the notices required by this section shall not be a jurisdictional prerequisite to the accrual of any forfeiture provided by this act, or to the suspension of the corporate powers of any delinquent corporation and the officers thereof hereinafter provided, nor be held to be an essential prerequisite to the imposition of such or any other penalties for delinquency and nonpayment.

Sec. 10. The license tax due from any corporation subject to the provisions of this act is a lien upon the real property of such corporation from and after the first day of January of each year and until paid or until the property is sold for the payment thereof. On or before the first Monday in April of each year the secretary of state shall make a list of all corporations subject to the tax imposed by or that should have been paid under this act and which have failed to pay the same, and transmit a certified copy thereof to each county clerk and county recorder in this state. Said county clerks and county recorders shall file such certified copies in their respective offices in such manner that the same shall be preserved in the form of a permanent record of such office and easily identified by and available to the public. Said copies so certified by the secretary of state and filed as herein provided shall, in the case of each corporation, state whether such corporation is a domestic or foreign corporation and specify the tax and penalties which each corporation has incurred for failure to pay the tax imposed by this act. Such certified copies so filed with either of said county officers, or any copy thereof certified by the secretary of state, shall be received in evidence in any court in lieu of the original record on file with the secretary of state and shall be prima facie evidence of the truth of all statements contained therein.

Sec. 11. After six o'clock p.m. of the Saturday preceding the first Monday in March in any year, the corporate rights, privileges and powers of every domestic corporation which has failed to pay the tax and money penalty for nonpayment thereof imposed by this act shall, from and after said hour of said day, be suspended, and incapable of being exercised for any purpose or in any manner, except to execute and deliver deeds to real property in pursuance of contracts therefor made prior to such time, and to defend in court any action brought against such corporation, until said tax with all accrued penalties, taxes and charges due to the state under this act and subdivision (d) of section fourteen, article thirteen of the constitution are paid as hereinafter provided. The right and privilege of every foreign corporation, subject to the pro-

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Revivor by
foreign
corporation.

Money
penalty.

Contracts
void.

Method of
revivor of
domestic
corporation.

Additional
amount.

Controller's
certificate.

County
recorder and
county clerk.

Rights
revived.

No
dissolution
until tax
paid.

visions of this act, to transact intrastate business in this state shall, for failure to pay the tax and money penalty for nonpayment thereof imposed by this act, be forfeited at said hour of said day, and the secretary of state shall make a record of such forfeiture. In the case of foreign corporations such forfeiture may be relieved and the corporation's privilege to transact intrastate business in this state restored in the manner hereinafter provided. After said hour of said day and until such taxes, penalties and charges are paid, every person who attempts or purports to exercise any of the rights, privileges or powers of any delinquent domestic corporation except as permitted by this act, or, who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business was had or occurred. Every contract made in violation of this section is hereby declared to be void.

Sec. 12. All corporate powers, rights and privileges, suspended or forfeited under the provisions of this act may be revived and restored to full force and effect upon application therefor by any stockholder or creditor thereof and upon payment of all accrued taxes and penalties due to the state under this act and subdivision (d) of section fourteen, article thirteen of the constitution. In case the application for such revivor and restoration is not made during the year in which such suspension or forfeiture occurred, such application shall not be granted nor a certificate of revivor issued to such corporation until there is paid to the secretary of state in addition to the tax and money penalty due or that should have been paid the state under this act and subdivision (d) of section fourteen, article thirteen of the constitution for the year in which such suspension or forfeiture occurred, a sum of money, equal to the tax, without penalty, imposed or that should have been paid under this act during the year in which such suspension or forfeiture occurred, for each year succeeding said year in which such suspension or forfeiture occurred. Upon payment of all such taxes and penalties, and upon payment of all other taxes due the state under subdivision (d) of section fourteen, article thirteen of the constitution, the state controller shall issue a certificate under his seal evidencing such payment and restoration, which certificate, when recorded in the office of any county recorder shall constitute a release of all existing liens for such taxes upon the property of such corporation. Each county recorder shall keep an index of all such controller's certificates recorded by him. Upon presentation of such controller's certificate of revivor to any county clerk said officer shall make a record thereof in his office in a book kept for such purpose. The record so made by said county clerk shall be *prima facie* evidence of the restoration to such corporation of all previously suspended or forfeited rights, powers and privileges unless it appears from the records in the office of such county clerk or of the controller or secretary of state that subsequent to the date of such certificate of revivor the powers of said corporation have been again suspended or its right to do intrastate business again forfeited.

Sec. 13. No court shall have jurisdiction to make or enter any decree of dissolution of any domestic corporation until all taxes and penalties due under this act shall have been paid.

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Sec. 14. Any corporation which has heretofore failed to pay any license tax and penalty imposed under the provisions of chapter three hundred eighty-six, statutes 1905, and amendments thereof, or under chapter one hundred ninety, statutes 1915, and for such nonpayment suffered a forfeiture of the charter of such corporation or of the right to do business in this state, may be relieved of such forfeiture, or may be restored to its right to do business in this state, upon making application therefor in writing and paying the license tax and penalties prescribed by said act, for nonpayment of which such forfeiture occurred. Application for restoration under the provisions of this section shall be made in writing, shall be signed by four-fifths of the surviving trustees or directors of said corporation, duly verified by said trustees or directors and filed with the state controller. Upon payment of the moneys due this state under the provisions of said act for the one year in which such forfeiture occurred, together with any tax levied in such year under subdivision (d) of section fourteen, article thirteen of the constitution by the state board of equalization, and the license tax due under the provisions of this act, the state controller shall issue a certificate of revivor to such corporation, and thereupon such corporation is revived and its powers restored to full force and effect.

The revivor of a corporation, under the provisions of this section, shall be without prejudice to any action or proceeding, defense or right, which has occurred by reason of the original forfeiture.

In case the name of any corporation which has suffered the forfeiture prescribed by either of said acts first in this section above mentioned, has been adopted by any other corporation since the date of said forfeiture, or in case any corporation has adopted subsequent to such forfeiture any name so closely resembling the name of such reviving corporation as will tend to deceive, then such reviving corporation shall be entitled to a certificate of revivor pursuant to the terms of this section only upon the adoption by such corporation seeking revivor of a new name, and in such case nothing in this section contained shall be construed as permitting such reviving corporation to carry on any business under its former name. Such reviving corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state, and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name as the case may be. The secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state and which has not suffered a forfeiture under either of the acts in this section first above mentioned, or to take or use a name so closely resembling the name of any corporation heretofore organized in this state as will tend to deceive.

The provisions of title nine, part three of the Code of Civil Procedure, in so far as they conflict with this section of this act are not applicable to corporations seeking revivor under this act.

Sec. 15. Any foreign corporation may surrender its right to engage in intrastate business in this state by filing with the corporation license tax exemption board an affidavit, sworn to by the president of such corporation, which shall contain a concise statement of the nature, character and manner of doing any business of any kind that such corporation may thereafter intend to transact in this state. Said corporation shall furnish such other or additional information as may be required by said board. Said board shall consider such application and the order of such board approving the same shall terminate the right of such corporation

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to transact intrastate business in this state. Any person transacting any intrastate business in this state in behalf of such corporation after approval of such application to surrender such privilege shall be guilty of a misdemeanor and punishable as provided in section eleven of this act.

False statement. Sec. 16. Any false statement contained in any of the affidavits herein required shall constitute perjury, and shall be punishable as such.

Money paid. Sec. 17. All moneys herein required to be paid shall, upon collection, be immediately paid into the state treasury.

Certain statutes not affected. Sec. 18. Nothing in this act shall be construed as affecting or repealing any statute of this state respecting the assessment of franchises and levying of taxes thereon, as required by section fourteen, article thirteen of the constitution and chapter three hundred thirty-five of statutes of one thousand nine hundred eleven of this state and amendments thereof.

Title of act. Sec. 19. This act shall be known as the "corporation license act."

In effect. SEC. 2. This act, inasmuch as it provides for a tax levy, shall, under the provisions of section one of article four of the constitution, take effect immediately.

Citations from Decisions of the California
Supreme and Appellate Courts
Affecting License Taxes

DECISIONS OF SUPREME AND APPELLATE COURTS AFFECTING LICENSE LAWS.

An ordinance passed by the supervisors of a county, imposing a license upon the Southern Pacific Railroad Company for carrying freight or persons for hire by means of railroad cars in the county, is void, as a tax upon the use of the franchise granted to that railroad company by the government of the United States. Both the franchise and its use are beyond the taxing power of the state.

San Benito County vs. Southern Pacific Railroad Company, 77 Cal. 518.

A license tax imposed by a municipal corporation upon a railroad company engaged in interstate commerce is void and can not be enforced. The fact that the license tax was imposed upon a branch line of the railroad operated in the municipality does not render the tax valid, where it appears that the branch line was a part of the transcontinental line of railroad, and the railroad company is engaged in the carriage of freight, passengers, and mails between all points on the branch line and points on the main line of the railroad outside of the State of California.

City of San Bernardino vs. Southern Pacific Company, 107 Cal. 524.

A license tax upon the privilege or right to carry on a particular trade without a city is not a tax upon property, within the meaning of article XIII, section 1, of the constitution.

City of Los Angeles vs. Los Angeles Independent Gas Company, 152 Cal. 765; citing *People vs. Naglee*, 1 Cal. 252; *People vs. McCreery*, 34 Cal. 448; *High vs. Shoemaker*, 22 Cal. 369; *Ex parte Hurl*, 49 Cal. 559.

So far as the license charge is imposed by the act on foreign corporations, it is of the same general nature and rests upon the same basis as the charge imposed upon domestic corporations. It is imposed as a condition of the grant of the privilege to do business in the state, and is not a tax on property.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

The license tax acts impose the duty on all domestic corporations (excepting the exempted class) to pay the so-called license tax regardless of whether they actually transact or attempt to transact business in this state.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638;
Lewis vs. Curry, 156 Cal. 93.

Under the license tax acts it is not necessary that the forfeiture before becoming effective must be established by the decree of a court of competent jurisdiction in a proceeding brought for that purpose.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638; citing *Los Angeles Railway Company vs. Los Angeles*, 152 Cal. 242; *Oakland, etc., Railroad Company vs. Oakland*, 45 Cal. 365; *Upham vs. Hosking*, 62 Cal. 250.

Although a forfeiture at common law does not operate to divert the title of the owner until by a proper judgment in a suit instituted for that purpose the rights of the state have been determined, a statute prescribing a forfeiture may be self-executing. Such is the necessary effect of the language used in the license tax acts.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

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The charge imposed by the act of March 29, 1905, providing for a license tax upon corporations, to be collected by the secretary of state, on the corporations affected by its provisions, and denominated a "license tax," is not a tax on "property" within the meaning of that word as used in section 1 of article XIII of the state constitution, providing that "all property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law." It is merely an annual charge or excise imposed by the state for the privilege obtained from it of being and continuing to exist as a corporation.

Kaiser Land and Fruit Company vs. Curry, 155 Cal. 638.

Where there was a showing of a defense that the foreign corporation had failed to pay the statutory license tax, the court, under the provisions of the act of 1907 (Stats. 1907, p. 146), properly exercised its discretion to allow its directors, as trustees, to be substituted to maintain the action in behalf of the corporation.

Reed & Company vs. Harshall, 12 Cal. App. 697.

Upon the forfeiture of the charter of a corporation for failure to pay its license tax or fee, the directors become at once, *ipso facto*, trustees of the corporation and its stockholders, for the purpose of closing up the affairs of the corporation, and, after payment of the debts of the corporation and the expenses of liquidation, to distribute the remaining assets of the corporation among those entitled thereto.

Turney vs. Morrissey, 22 Cal. App. 271. See, also, *Rossi vs. Caire*, 52 Cal. Dec. p. 701.

A foreign corporation which has forfeited its right to do business in the state by failing to pay the license tax, is not a proper party defendant to an action, brought by one who has acquired shares therein since such forfeiture, to compel the reissuance of stock. Such action can be maintained, if at all, only against the directors as trustees of the corporation.

Carpenter vs. Bradford, 23 Cal. App. 560; citing *Reed & Company vs. Harshall*, 12 Cal. App. 704; distinguishing *Kaiser Land and Fruit Company vs. Curry*, 155 Cal. 638; *Lewis vs. Curry*, 156 Cal. 95; *Lewis vs. Miller & Lux*, 156 Cal. 102.

Under the act of March 20, 1905, providing for a license tax on corporations, the penalty for delinquency does not attach until the forfeited list is turned over to the governor and he has issued his proclamation thereon.

Ukiah Guaranty Company vs. Curry, 148 Cal. 256.

The proclamation required by the license tax act to be issued by the governor declaring what domestic and foreign corporations are delinquent in the payment of the state license tax, need not specifically designate which of the corporations' names in the proclamation are domestic and which are foreign. A designation of each corporation, whether foreign or domestic, by its true corporate name is sufficient.

Lewis vs. Curry, 156 Cal. 93.

A domestic corporation which has forfeited its charter by reason of its failure to pay the state license tax ceases to exist as such, and its property having been taken in charge by its directors as trustees, as provided in section 400 of the Civil Code, neither it nor its directors can be compelled to continue to do business by reissuing stock transferred from one of its stockholders to another person.

Lewis vs. Miller & Lux, 156 Cal. 101.

In an action by a California corporation, an averment in the answer of the plaintiff's corporate existence and its engagement in business is an admission of its capacity to sue, and is a waiver of proof that it is a corporation. Under such pleadings, the defendant, if it relies upon the fact as a defense, must show the

CITATIONS FROM DECISIONS OF COURTS.

failure of the plaintiff to comply with the provisions of the act imposing a license tax upon corporations. It was not incumbent on the plaintiff, merely because non-payment of the license tax was pleaded in the answer, to prove its payment in order to establish its right to maintain the action.

Alaska Salmon Company vs. Standard Box Company, 158 Cal. 567.

In pleading a defense, it is not sufficient to merely allege "that the plaintiff has wholly failed to pay the license or any of the licenses required to be paid by the provisions of the act." A forfeiture of corporate existence under that act is not effected unless the acts required to be performed by the secretary of state and the governor in proclaiming the forfeiture have been performed in the manner required, and the performance of such acts must be alleged.

Alaska Salmon Company vs. Standard Box Company, 158 Cal. 567.

The act of 1905, providing for a license tax upon corporations, and requiring every corporation, incorporated under the laws of this state, and every foreign corporation then doing, or which should thereafter engage in business in this state, to procure annually from the secretary of state a license authorizing it to transact business in the state, and to pay therefor a license tax graduated upon the amount of its authorized capital stock, and section 416 of the Political Code, requiring corporations to pay the secretary of state for his services in filing their articles of incorporation, certain fees graduated upon the amount of their capital stock, are unconstitutional and void, as to foreign corporations engaged in carrying on an interstate as well as an *intrastate* business, for the reason that such exactions are the imposition of a direct burden upon their interstate commerce in violation of the commerce clause of the constitution of the United States, and also an illegal tax on their property situated outside of the state.

H. K. Mulford Company vs. Curry, 163 Cal. 276.

Such license taxes are also invalid as to domestic corporations engaged in interstate as well as *intrastate* business in California, and having property without the state. Such laws can apply only to domestic corporations nowhere engaged in interstate business and to foreign corporations seeking to enter the state solely to do domestic business. Upon the right of a foreign corporation to enter the state to do an *interstate* business the state may impose no burden whatever.

H. K. Mulford Company vs. Curry, 163 Cal. 276.

NOTE.—The case of *H. K. Mulford Company vs. Curry*, 163 Cal., p. 276, was overruled *in toto* in the case of *Albert Pick & Company vs. Jordan*, 169 Cal. 1.

Persons proposing to form a corporation under the laws of the State of California, for the purpose *inter alia* of engaging in interstate commerce, and part of the proposed capital of which they intend to invest in other states, are not entitled to perfect their proposed corporation, by filing their articles of incorporation in the office of the secretary of state, until they have paid the filing fee and license tax contemplated by section 416 of the Political Code and section 409 of the Civil Code.

City Properties Company vs. Jordan, 163 Cal. 587.

Such an embryonic corporation, until it has acquired vitality and has become a legal entity by obtaining from the state a right to corporate existence, has no constitutional rights which can be affected by the exaction of such filing fee or license tax.

City Properties Company vs. Jordan, 163 Cal. 587.

The *situs* of stock in a corporation is in the state of the incorporation, for the purposes at least of the inheritance tax law.

McDougald vs. Low, 164 Cal. 107; citing *Murphy vs. Crouse*, 135 Cal. 19.

Foreign corporations have always been allowed to enter this state and do any business therein that is within their corporate powers. Their right to do so has been recognized and sanctioned by our statute ever since April 4, 1870 (Stats. 1869-70.

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p. 881). For all purposes of every business within their capacity they are classed with domestic corporations, provided they comply with the statutes allowing them to do business here, and a statute which by necessary construction confers powers upon corporations in general is to be understood to confer that power upon foreign corporations doing business here as well as upon domestic corporations.

San Joaquin and Kings River Canal and Irrigation Company vs. James J. Stevenson, 164 Cal. 221. See same case in 26 Cal. App. 221.

It is held in this proceeding in *mandamus* to compel the secretary of state to file a certified copy of the articles of incorporation of a foreign corporation engaged in carrying on both an interstate and intrastate mercantile business in this state, without prepayment of the fee prescribed by subdivision 4 of section 409 of the Political Code and the fee prescribed by section 2 of the corporation license tax act of 1905, that in view of the present condition of the decisions of the supreme court of the United States brought about by the recent decisions in the cases of *The Baltic Mining Company* and *S. S. White Dental Manufacturing Company vs. The Commonwealth of Massachusetts*, 231 U. S. 68, the case of *Mulford Company vs. Curry*, 163 Cal. 276, wherein such fees were held to be unconstitutional, should not longer be regarded as an authority, and that as to both of the license fees in question their payment is exacted as a privilege or occupation tax exclusively upon the right to do a domestic business within the State of California, that these taxes are excise taxes and not property taxes, that the tax is not on, nor based on, the capital stock of the corporation, but is merely admeasured by that capital stock, and that in every case it is practicable to segregate the strictly domestic business of a corporation from its interstate business.

Albert Pick Company vs. Jordan, 169 Cal. 1; overruling *Mulford Company vs. Curry*, 163 Cal. 276.

Under section 1001 of the Civil Code, a foreign corporation acting in a quasi-public capacity may acquire property by condemnation in this state for any public use specified in section 1238 of the Code of Civil Procedure.

San Joaquin and Kings River Canal and Irrigation Company vs. James J. Stevenson, 164 Cal. 221.

A foreign corporation, which has complied with the laws of this state governing its right to do business herein, may exercise the power of eminent domain.

Deseret Water, Oil and Irrigation Company vs. The State of California, 167 Cal. 147.

The secretary of state of the State of California is not personally liable for moneys collected by him in his official capacity, and paid to him under protest, in satisfaction of illegal corporate license taxes imposed under the requirements of the act of March 20, 1905 (Stats. 1905, p. 493), after he has paid such moneys into the state treasury as required by law.

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270.

The right of insurance companies, whether foreign or domestic, to do an insurance business in this state is a franchise, and is property of the company engaged in it. It is upon this franchise that under such provisions of the constitution (section 14 of article XIII) the tax therein provided for is levied. The state license tax imposed under the act of March 20, 1905, as it stood when the constitutional provision was adopted, was a tax for revenue imposed, so far as insurance companies are concerned, on their franchise right to do business in the state.

Hartford Fire Insurance Company vs. Jordan, 168 Cal. 270; citing *City of Los Angeles vs. Los Angeles Independent Gas Company*, 152 Cal. 765; *City of Sonora vs. Curtin*, 137 Cal. 583.

CITATIONS FROM DECISIONS OF COURTS.

The license charge imposed by the motor vehicle act is an excise or privilege tax, established for the purposes of revenue in order to provide a fund for roads under the dominion of the state authorities. It is not a tax imposed as a rental charge or a toll charge for the use of the highways owned or controlled by the state.

Pacific Gas and Electric Company vs. Roberts, 168 Cal. 420; citing *Western Union Telegraph Company vs. Hopkins*, 160 Cal. 106.

The method of taxation of public service corporations adopted by section 14 of article XIII of the constitution is intended as a substitute not only for the *ad valorem* taxes theretofore levied upon their franchises and physical properties, but also for all privilege taxes, whether the same are imposed upon the right to conduct business, or upon specific personal property as a condition of the right to use it generally or for some specific purpose.

Pacific Gas and Electric Company vs. Roberts, 168 Cal. 420; citing *City and County of San Francisco vs. Pacific Telephone and Telegraph Company*, 166 Cal. 244; *Hartford Fire Insurance Company vs. Jordan*, 168 Cal. 270.

Notwithstanding the claimant is a foreign corporation having its principal place of business in the state of its incorporation, a finding that it was not absent from this state within the purview of section 1493 of the Code of Civil Procedure, is sustained by evidence that long prior to and during the entire time the notice to creditors was being published all the property of the corporation was within this state, all of its officers and agents were there, all of its business was transacted there, all the meetings of its board of directors were held there, and that the corporation was organized for the purpose of carrying on business in the state of California.

Tropico Land and Improvement Co. vs. Lambourn, 170 Cal. 33.

Section 552 of the Civil Code although in terms applying only to domestic corporations, is not unconstitutional on the ground of being class legislation, because foreign corporations doing business in California must conform to its laws.

Franscioni vs. Soledad Land and Water Co., 170 Cal. 221.

A corporation, like an individual, has a legal residence somewhere, and it is thoroughly settled that within the contemplation of such statutes as section 392 of the Code of Civil Procedure, a private corporation must be held to reside at the place "where its principal office or place of business is established," and this applies to a municipal corporation, as well as to a public body known as a drainage district.

Gallup vs. Sacramento and San Joaquin Drainage District, 171 Cal. 71.

A judgment against a corporation after its charter had been forfeited is a nullity, and will not support a creditor's bill against a stockholder of the corporation on an unpaid stock subscription.

Llewellyn Iron Works vs. Abbott Kinney Company, 172 Cal. 210.

When a corporation has failed to pay its license tax and a forfeiture of its charter has been declared, it ceases to be a corporation, and the title to the property formerly owned by it vests in the former directors as trustees.

Allwyn's Law Institute vs. Martin, 173 Cal. 21; citing *Newhall vs. Western Zinc Mining Co.*, 164 Cal. 380.

A purchaser of stock of a corporation after its dissolution becomes the owner, at most, of an equitable interest in the assets of the defunct corporation, and can not become a stockholder of record.

Allwyn's Law Institute vs. Martin, 173 Cal. 21.

The only competent proof of the forfeiture of the franchise of a corporation for the nonpayment of its license tax is the governor's proclamation declaring such

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forfeiture, or a certified copy thereof, and the certificate of the secretary of state as to certain data of record in his office is not sufficient proof thereof.

Kehrlein Swinnerton Construction Company vs. Rapken, 30 Cal. App. 11.

The directors of every corporation whether it has forfeited its charter or not are the real persons and actors in actions begun by it or for its benefit, and this being so, it does not seem to be so material in what name they begin their actions so long as the identity of their act as the act of the corporation is undeniable.

Kehrlein Swinnerton Construction Company vs. Rapken, 30 Cal. App. 11.

Where a corporation upon the forfeiture of its charter for the nonpayment of a license tax, makes a transfer of all of its property to a newly organized corporation, and the latter occupies the same premises, uses the same furniture and publicly displays the old names at the original place of business, the new corporation is in effect only a mere reorganization of the old corporation, and therefore liable for services rendered to the latter prior to the transfer.

Strahm vs. Fraser, 32 Cal. App. 447.

The directors of a corporation, before its dissolution, do not, by virtue of their office, hold or possess any title to or interest in the property of the corporation. The title is wholly vested in the corporation. The above statute (Sec. 10a, Stats. 1907, p. 746) providing that, upon the forfeiture of the charter, the directors shall become trustees for the corporation and its stockholders to settle its affairs, does not purport to invest the trustees with any title to the property formerly belonging to the corporation. They get by the forfeiture nothing more than the statute gives them and that is merely a *power over the property, not the title*. The corporation having ceased to exist, it is no longer capable of holding the title or the possession. *the property belongs to the persons who were its stockholders at the time it ceased to be a corporation*, and the right of possession passes to the directors by force of the statute making them trustees to settle the corporate affairs, since such right must be necessary for that purpose.

Rossi vs. Caire et al., 52 Cal. Dec. p. 701.

A railroad corporation organized and existing under the laws of the state of Nevada, which owns and operates a steam railroad, which begins and ends entirely in that state, but which maintains its general offices in the state of California and at such offices holds its directors' meetings, keeps its books, records and accounts, performs all of its clerical work, and prepares and issues all vouchers and checks in payment of its bills, wages, and salaries, and which also in this state receives and disburses all moneys in the operation of the road and purchases all supplies necessary to its operation, is liable for the payment of the annual license tax required by the act of 1915 of corporations "doing intrastate business within this state."

Bullfrog, Goldfield Railroad Company vs. Jordan, 53 Cal. Dec. p. 167.

In the matter of the taxation of public service corporations, insurance, banking and trust companies, it is the clear intention of section 14 of article XIII of the constitution to include within its terms the corporations therein designated only when such corporations are rendering a service to the public.

Transcontinental Telegraph Company vs. Neylan et al., 25 Cal. App. Dec. p. 185.

Property owned by a telegraph company which is not engaged in any public service is subject to all the taxes that may be imposed upon nonoperative property, and also to the payment of the license taxes under the Corporation State License Tax Act.

Transcontinental Telegraph Company vs. Neylan et al., 25 Cal. App. Dec. p. 185.

OFFICIAL ADVERTISING AND PUBLICATIONS

THE LAW OF OFFICIAL ADVERTISING AND PUBLICATIONS

POLITICAL CODE.

TITLE V.

PUBLICATIONS BY STATE OFFICERS AND COMMISSIONERS, OR OTHER OFFICIALS, OR THE OFFICERS OF COURTS, COUNTIES, CITIES, CITIES AND COUNTIES, OR TOWNS, AND PUBLICATIONS REQUIRED TO BE GIVEN OR MADE BY LAW.

- 4458. Publication and notices, how given or made.
- 4459. Publication and notices, how printed.
- 4460. Newspapers of general circulation defined.
- 4461. Penalty.
- 4462. Newspapers of general circulation, how character defined.

4458. Whenever any publication, or notice by publication or official advertising is required to be given or made by the provisions of this Code, the Civil Code, the Code of Civil Procedure, the Penal Code, or by any law of the state, by any officer now existing, or any hereafter created, in this state, or any political subdivision thereof, or by any officer of any court, or officer of a county, city, city and county, or town in this state, such publication, or notice by publication, or official advertising shall be given or made only in a newspaper of general circulation, where such a newspaper is published within the jurisdiction of such official. Where no newspaper of general circulation is published within the jurisdiction of such official, then such publication or notice by publication, or official advertising, shall be given or made in a newspaper of general circulation, published nearest thereto.

4459. All publications, or notices by publication, or official advertisements referred to in the preceding section, must be set in type not smaller than nonpareil, and must be preceded with words printed in black-face type not smaller than nonpareil, describing or expressing in general terms, the purport or character of the notice intended to be given.

4460. A newspaper of general circulation is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and which shall have been established, printed and published at regular intervals, in the state, county, city, city and county, or town, where such publication, notice by publication, or official advertising is given or made, for at least one year preceding the date of such publication, notice or advertisement. A newspaper devoted to the interests, or published for the entertainment or instruction of a particular class, profession, trade, calling, race, or denomination, or for any number of such classes, professions, trades, callings, races, or denominations when the avowed purpose is to entertain or instruct such classes, is not a newspaper of general circulation.

REVENUE LAWS OF CALIFORNIA.

Liability
of public
officials.

4461. State officers or commissioners, or other officials, and the officers of counties, cities, cities and counties, or towns, who violate or disregard the provisions of sections 4458, 4459, and 4460 of this Code, shall be responsible personally and on their official bonds for all damages occasioned thereby, together with one hundred dollars liquidated damages in each case, to be recovered in any court of competent jurisdiction by the person, association or corporation aggrieved or interested.

Proceedings
to declare
newspaper
of general
circulation.

4462. Whenever a newspaper shall desire to have its standing as a newspaper of general circulation, as that term is defined in section 4460, ascertained and established, it may, at its option, by its publisher, manager, editor or attorney, file a verified petition in the superior court of the county, or city and county, in which it is established, printed and published, setting forth the facts which justify such action. The petition or the substance thereof shall be published for ten days in the newspaper petitioning, and if the court so directs, in some other newspaper, together with a notice that the petitioner intends on a certain day to apply for the order herein mentioned. Upon proof being made of the publication of such petition and notice, the court shall set the same for hearing, and at any time prior to or on the day so set, or prior to or on any day to which it may be continued, any person may appear and contest the petition. The court shall hear the proofs of the petitioner and contestant, if there be any, and shall within ten days thereafter render its decision and judgment and the clerk shall enter the same in the records of the court. The decision and judgment herein provided for may be vacated, modified or set aside by the court on its own motion, or on the motion of any person, whether a party to the original proceeding or not, upon a verified statement of facts, upon ten days' notice to the petitioner, and upon a satisfactory showing made to the court that such newspaper has ceased to be a newspaper of general circulation as that term is defined in section 4460; but all publications made in such newspaper during the period it was adjudged to be a newspaper of general circulation shall be deemed and held valid and sufficient. Nothing contained in this section shall be held or construed to be obligatory or as requiring any newspaper to comply with its provisions in order to be in fact, or in law, a newspaper of general circulation, as that term is defined in section 4460, but any newspaper may, at its option, avail itself of the provisions of this section. [Statutes 1905, p. 406.]

Publication
of notice.

Proof of
publication.

Court to
hear proofs
and render
decision.

Effect of
decision.

These
provisions
optional.

RULES AND REGULATIONS
PRESCRIBED BY THE
STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA FOR THE
GOVERNMENT OF ASSESSORS

And of Supervisors Sitting as County Boards of Equalization in the
Several Counties of this State

ADOPTED MARCH 16, 1881 REVISED JANUARY 6, 1896

RULES AND REGULATIONS.

OFFICE OF THE STATE BOARD OF EQUALIZATION,
SACRAMENTO, MARCH 16, 1881.

By authority of section 3692 of the Political Code, the following rules and regulations are prescribed by the state board of equalization for the government of county assessors and county boards of supervisors sitting as boards of equalization:

I.

The design of the law in the matter of assessing and collecting the public revenue is to carry into effect the constitutional requirements that all property in this state not exempt under the laws of the United States shall be taxed in proportion to its value, excepting from taxation fruit- and nut-bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county or municipal corporation within this state. To this end the law requires the assessment of all taxable property in the state to be at first completed before the rate of state or county taxation is determined. The assessment must be completed on or before the first Monday of July of each year, and the equalization by the county boards of equalization must be completed on or before the third Monday in July. All taxable property must be assessed at its "full cash value."

The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

II.

Assessors are hereby instructed to use the form of statement or assessment list adopted and furnished by the state board of equalization, or a form substantially the same, and in all cases to exact statements, sworn to and signed by the person assessed, which must be carefully preserved in the office of the assessor.

Section 3631 remains unchanged, providing that the assessor may fill out the statement when he presents it, or may require the taxpayer, within such time as the assessor may appoint, to return the same properly filled out and sworn to.

III.

In addition to the affidavit required by section 3630 of the code above mentioned, and before taking from any person the statement required by section 3629 of said code, the assessor must administer to such person an oath, that he or she will true answer make to all questions put to him or her concerning all matters contained in said last mentioned section.

In this connection attention is called to the explicit provisions of section 3629 as to the statement to be made by taxpayers. The object of the section is to obtain a complete and detailed list of the taxpayer's taxable property owned by him on the first Monday of March of each year.

IV.

Attention is called to section 3633, where the assessor is required to make a valuation of the property of persons failing or refusing to make proper statements of their property. Where statement is refused or neglected, or the party fails to comply with the requirements of the assessor, the assessor must be careful to note on the assessment book, opposite the name of the party assessed, the refusal, thus: "Refused to give statement as to property," etc., or whether he refused or neglected so to do. The action of the county assessor is final. The board of supervisors

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have no power to reduce such assessment; and the county auditor must, in all cases, ignore any attempt of said board to reduce the same. The board of supervisors may, however, raise such valuation as in other cases.

V.

Assessors must not assess the property of any person in "gross," but after demanding and receiving from each person to be assessed a specific statement, setting forth in detail, and in accordance with the assessment lists, the quantity, number, or kind of each class of property assessed, the assessor will then fix the proper values at which the several properties are to be assessed, according to his own judgment, governed by the requirements of the code and these rules. If the person being assessed makes any statement of the value of the property, or any portion thereof, whether under oath or not, the assessor should consider the same, but will not be bound thereby, but must assess such property at its "full cash value."

VI.

Assessors must not accept returns or statements from agents for persons, when the persons themselves can be found in the county.

VII.

Care should be taken, when assessing unsecured solvent credits, to bear in mind that it is the intention of the law to assess all unsecured credits due and owing to the party assessed by all non-residents as well as residents of this state; but in making deduction from the aggregate amount of such credits, allowance must be made only for such unsecured debts as the assessed party owes to bona fide residents of this state. The only deductions allowable on account of such debts of the party are debts which are not secured by mortgage, trust deed, or other lien on real or personal property due by him to bona fide residents of this state.

VIII.

What is known as a *special deposit* of money or other valuables, in a bank, or with a banker or other person—that is to say, a deposit by the terms of which the custodian of the deposit has no right to the use of the same, but is merely charged with the duty of safely keeping it for the benefit of the depositor—is not to be assessed to such bank, banker, or other person, but such deposit must be assessed to the depositor. In case such depositor resides in another county, the assessor must immediately, by mail or express, inform the assessor of the proper county of the nature, amount, and place of deposit, and of the name of the depositor. In case such depositor is absent from the state, the deposit must be assessed to the bank, banker, or other person in whose keeping the same remains, specifying in the assessment that said bank, banker, or other person is assessed for such deposit as the agent of the owner, naming such owner.

IX.

Banking corporations, and all banks and banking firms or associations, or persons doing a banking business, must be assessed for the full amount of money, gold dust, or bullion on hand (except the special deposits mentioned in Rule VIII); and, in addition thereto, under the head of solvent credits, all their loans, and all solvent credits due them which are secured by mortgage or other lien upon real or personal property, must be assessed at the full cash value thereof, without any deduction on account of any indebtedness, and notwithstanding the creditors (or depositors, as they are commonly called) of such corporations, banks, banking firms, associations, or persons, may have been, or may be liable to be, assessed for their said deposits or credits, as solvent credits due them. With respect to such solvent credits as are not secured in the manner above stated, the excess of the same over the amount of the same party's indebtedness which is not secured in the manner above stated, only is to be assessed. You are specially instructed that in case of

RULES BY STATE BOARD OF EQUALIZATION.

savings and loan corporations, where the depositors in such institutions are not assessed for their deposits or "solvent credits," you will not permit such corporations to deduct from their statement of "solvent credits," *i. e.*, the unsecured debts due them, the amount due by them to their depositors as "debts due bona fide residents." They are not entitled to such deduction. You will assess such corporations for the full amount of their "solvent credits."

X.

The term "*solvent credits*" includes all debts owing by any such institution or persons, except savings and loan corporations, as are mentioned in Rule IX, to their creditors or depositors, on account of moneys or securities loaned to or deposited with them (excepting the *special deposits* described in Rule VIII), and such debts must be severally assessed at their full cash value, as solvent credits, to such creditors or depositors, or such other persons as at the time of assessment may be the owners or holders of such credits, subject to the deduction allowed on account of unsecured indebtedness, as required in Rule VII. State, county, city and county, city, and all municipal bonds, warrants, or scrip, are to be assessed as unsecured solvent credits, from which the assessed party may deduct his unsecured debts due bona fide residents of this state.

XI.

In assessing solvent credits, whether the same are secured by mortgage, trust deed, contracts, or other obligations, or are unsecured, they are to be valued only at the actual value of the security; that is to say, if the face value of the mortgage is greater than the value of the property, the mortgage should be assessed at no greater value than the property; and so in the case of all other credits secured on either real or personal property, the credit should be assessed at no greater value than the security. In the case of unsecured credits, the same should be assessed at their real value, which may in many instances, be less than the par value.

XII.

Care should be taken so as not to assess money loaned out, or money loaned to or deposited with banks or banking associations *as money*, but such property must be assessed to the owners or holders as solvent credits. In assessing any credits due any person, association, or corporation, the present cash value of the credit is to be ascertained, as near as may be, by taking into consideration the nature of the indebtedness; the ability of the debtor to pay the same, in whole or in part; the character and sufficiency of the security, if any there be; the times when payable, and such other circumstances as have a present and direct effect upon the value.

XIII.

The July statement, required for the state board of equalization by section 3655, must be furnished in all cases, and the forms furnished by the board for that purpose must be fully filled up. The corrected assessment book required to be prepared by the auditor for the tax collector, must in all cases be furnished, with the affidavit attached, as required by section 3732.

XIV.

Lands and the improvements thereon must be separately assessed.

"Cultivated and uncultivated land, of the same quality and similarly situated, shall be assessed at the same value."

The above is the literal command of both the constitution and the code, and it will require great care on the part of the assessor in conforming to it.

If the uncultivated land here referred to is land of like quality, and situated in like manner as cultivated lands adjoining, or in the same vicinity, but is not in a condition to be cultivated by reason of not having been reclaimed from its natural state and condition, or not having been cleared from natural obstructions necessary

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to be removed in order to cultivate the same, then such land, though similarly located, is not similarly situated with the cultivated land, within the meaning of the constitution and the code. The constitution, in the section immediately preceding the one from which the above language is quoted, provides that all property "shall be taxed in proportion to its value, to be ascertained as provided by law."

The legislature has declared that "all taxable property must be assessed at its full cash value," and that "full cash value" means "the amount at which the property would be taken in payment of a just debt due from a solvent debtor." Such uncultivated lands, therefore, as those last above described, must not be assessed at more than their actual cash value in the condition in which they are found by the assessor. There are, however, in this state, large amounts of uncultivated lands which need no reclamation nor clearing, and which are ready for the plow, and which may be assessed at the same value as cultivated lands of like quality and situation, without violating the above-mentioned full cash value rule; and when such is the case, they must be so assessed.

XV.

Lands must be assessed in parcels or subdivisions, not exceeding six hundred and forty acres each; and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States Government, must be assessed by sections or fraction of sections.

The attention of assessors is directed to section 3634 of the code, as amended, which provides the means for the assessor to speedily obtain, through the medium of the courts, a survey of tracts of lands when the owner or agent fails or neglects to furnish the statement required by law.

XVI.

Leased lands should be assessed to the lessor or landlord. Morgaged lands should be assessed to the mortgagor or owner.

XVII.

Money due from any banking corporation or association doing a banking business, on account of deposits, must be assessed to the depositor in the county where such depositor resides.

XVIII.

Water ditches constructed for mining, manufacturing, or irrigating purposes, and wagon and turnpike toll roads, must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county. All telegraph and telephone lines shall be described in the same manner as real estate is described, but assessed as personal property by the assessor of the county at a rate per mile for that portion of such property as lies within his county. (*Vide* section 3663.)

XIX.

Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries must be assessed, and the taxes paid, in the county where located. The value of the franchise and water craft, and of toll bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll bridges. (*Vide* section 3643.)

XX.

All franchises must be separately assessed, and entered on the assessment book, without combining the same with other property or the valuation thereof. (*Vide* subdivision 15 of section 3650.)

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Franchises granted by a county, city and county, or city, must be assessed in the county, or city and county, in which they were granted. When granted by any other authority, they must be assessed in the county where the principal place of business of the holders thereof is situated. (*Vide* section 3628.)

XXI.

Attention is directed to the important changes and amendments to the codes relative to the assessment of property belonging to railroad corporations.

Assessors will assess *all property* of any character, including the franchise belonging to any railroad corporation operated *exclusively* within their county, and also all the depots, station grounds, shops, buildings, fences, gravel beds, and other taxable property situated within their counties, of railroads operated in part in the county, and not included in the franchise, roadway, roadbed, rails, or rolling stock thereof.

The state board of equalization will assess the franchise, roadway, roadbed, rails, and rolling stock *only*, of all railroads operated in more than one county. The apportionment for each county will be furnished to the auditor, which assessment must be entered on the assessment book of the county.

XXII.

SALT-MARSH AND TIDE LANDS, OVERFLOWED LANDS, SCHOOL LANDS, and all other lands purchased of the state, by payment in whole or in part, must be assessed at their full cash value to such purchasers, or their assigns or legal representatives. (*Vide* section 3628.)

PRE-EMPTION CLAIMS to lands should be listed as the possession, interest, and claim of A. B. in and to the tract of land described as follows (describing the land), and tax becomes payable immediately. (*Vide* section 3820.)

If, however, the entire purchase money has been paid by the pre-emptor, and a certificate issued therefor, THE LAND ITSELF must be assessed to such pre-emptor, notwithstanding the patent has not issued.

XXIII.

Timber upon mineral lands, when such timber is owned by railroad companies under the provisions of section 3 of the act of congress of July 1, 1862, and acts amendatory of and supplemental thereto, must be assessed to the railroad company to which such timber belongs.

Such timber, as well as all mines and quarries, belonging to individuals or corporations, and situated upon lands of the United States, must be assessed to such individuals or corporations, and the tax collected as provided in section 3820.

XXIV.

What are known as CONSIGNMENT GOODS, in the possession of any person in this state, consigned to such person from any place out of this state for sale, are required by section 3638 of the Political Code to be assessed as other property. The only exception allowable to this general requirement is in cases where goods consigned from a foreign state or country remain, and at the time of assessment are in unbroken or unopened original packages, in the hands of the importer or consignee.

XXV.

Migratory stock must be assessed in the county where it was pastured, or was located, on the first Monday in March. Where the owner of stock kept, or that had been kept, in another county, on said day in March, resides in your county, you can not assess him for such stock; but you should immediately notify the assessor of the county where the stock should be assessed of such fact.

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XXVI.

Under the constitution, there can be no exemption from poll tax by male inhabitants over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. As will be seen by section 3839 of the code, no exemption is allowed to the militia, firemen, or to persons performing any other public service whatever. Assessors must keep a roll of the names and places of residence, or business, of all persons liable for poll tax, upon which must be marked the date of all payments; and if the tax is not paid, the cause of nonpayment. Personal demand for the tax must be made, otherwise the person not paying can not be returned as delinquent.

The law governing the collection of poll taxes will be found in chapter IX of title IX of part III of the Political Code.

NOTE.—On November 3, 1914, a constitutional amendment was ratified which prohibits the imposition of poll taxes, or other head taxes—Rule XXVI is therefore obsolete.

XXVII.

Attention is invited to section 3658 of the Political Code, whereby it is made the duty of supervisors to provide maps of all the lands in the county, for the use of the assessors, the cost of such maps to be paid from the county general fund.

XXVIII.

Assessors are requested to carefully study all of the sections of the Political Code relative to the assessment of property, numbered from 3607 to 3671, inclusive. By consulting sections 3632, 3633, 3634, 3640, 3648, and 3649, above mentioned, and sections 429, 430 and 19 of the Penal Code, assessors will perceive that they are clothed with ample means to discover taxable property and ascertain the value thereof, and power to enforce obedience to the law on the part of persons liable to assessment. When occasion requires it, these powers should be used without fear or hesitation. The liability incurred by assessors for neglect of duties should also be carefully observed. (*Vide* sections 3656, 3660, 3661, 3662, 3697, and 3698, Political Code.)

XXIX.

The assessor must supervise the valuations of his deputies, and correct or change them according to his own judgment. Where the labor of assessing is apportioned in districts to different deputies, great inequalities between the several districts are apt to result, unless the assessor personally attends to fixing the valuations, and making them in proportion throughout the county, according to the true values of the lands or other properties assessed.

XXX.

Assessors must transmit to this board as soon as practicable, a statement, in duplicate, of all mortgages, deeds of trust, contracts, and other obligations by which any debt is secured, and which embrace or relate to lands in more than one county, in order to enable the board to apportion the value of such instruments in each county, and transmit such apportionment to the assessors of such counties, as required by section 3678. Such statement, in addition to a full description of the names, dates, amounts, etc., of the instruments, should contain all information the assessor may have in relation to the character and value of the lands described in such instruments.

The county recorder will annually furnish the assessor with a list of all uncancelled mortgages and other obligations given to secure a debt, and not barred by the statute of limitations, remaining on the records of his office on the first Monday of March.

XXXI.

Where two or more subdivisions of land, or land assessed in two or more subdivisions, all situated in the same county, city and county, or city, are embraced in one mortgage or other instrument creating a lien upon such lands, the assessor must

RULES BY STATE BOARD OF EQUALIZATION.

apportion the amount of assessment to be deducted from each subdivision on account of the assessment against said mortgage or other instrument, so as to ascertain the taxable surplus of each subdivision. (*Vide* section 3678.) Such apportionment should be made according to the *value* of each separate mortgaged tract. After fixing the value upon each subdivision of land covered by the same mortgage, if the aggregate value of such subdivision is in excess of the amount which was due on the mortgage on the first Monday of March, the proportion of such amount to be deducted from each subdivision can readily be computed. As an example: Say there are three subdivisions, one valued at \$1,000, another at \$3,000 and another at \$6,000, total \$10,000, all in one mortgage, upon which the amount due is \$5,000. The apportionment must be made in proportion to *value*, not *quantity* of the mortgaged land. The first subdivision would bear a deduction of one-tenth of the mortgage, or \$500; the next three-tenths, or \$1,500; the next six-tenths, or \$3,000. In case the aggregate value is less than the amount due on the mortgage, then, of course, there is no occasion for computing proportionate deductions, as there will be no surplus value of the land remaining to be assessed.

XXXII.

In assessing a mortgage, trust deed, or other obligation by which a debt is secured, the mortgaged property must be particularly described. The better way is to adopt the same description by which the land is assessed.

In all cases a mortgage or other security must be assessed in the county, or city and county, where the property affected thereby is situated.

XXXIII.

In case any property is found which has been SOLD TO THE STATE for delinquent taxes, pursuant to section 3773, such property must be assessed *not to the state*, but in the same manner and to the same person as if it had not yet been so purchased. In case the time of redemption has expired, and the property deeded to the state, the property, being the property of the state, must not be assessed.

XXXIV.

The statement or list of property furnished the assessor by a bank, corporation, association, or firm doing a banking business, should contain a full statement and description in detail of every mortgage, deed of trust, contract, or other obligation by which a debt is secured, owned, or in any manner held by them (giving the amount due upon each instrument) on the first Monday of March at twelve o'clock m.; also all real and personal property, including all unsecured solvent debts due them at the same time. From the aggregate amount of such unsecured solvent credits (debts due them) a deduction of the aggregate amount of unsecured debts due by them to bona fide residents of this state should be made; the balance, after such deduction, being all of the solvent credits subject to assessment. The above statement should be under oath, as in other cases. The assessor may examine the books of such bank, corporation, association, or firm for the purpose of ascertaining the correctness of such statement.

XXXV.

Railroads and other quasi-public corporations are not entitled to any deduction from the value of their properties by reason of mortgages or other obligations to secure payment of debts. The other quasi-public corporations referred to are such as are formed for the purpose of supplying towns and cities with water or gas, telegraph companies, toll bridges and toll road companies, ferries and corporations of a like public character. (*Vide* subdivision 15 of section 3650.)

XXXVI.

All lands must be assessed in tracts not exceeding six hundred and forty acres. If a tract contains more than six hundred and forty acres, it is the duty of the owner to subdivide the same, so that each subdivision shall contain six hundred and forty acres or less, and furnish the assessor with a full and correct description of the same, by metes and bounds. Such subdivision can generally be made without a survey in the field. The subdivisions may be made by a clear and certain description of each subdivision; in the case of large ranchos, or other large tracts, by a plat and map of the same, showing the subdivisions, with their boundaries, by lots, numbered and so described that reference may be made to them. Said plat or map should be made by the owner, and filed in the office of the county recorder, to which plat, and the subdivisions thereon delineated, the assessor may refer in describing the subdivision to be assessed. In case the owner neglects, for ten days after demand by the assessor, to furnish such necessary subdivision, duly described, the assessor may proceed to have such tract surveyed into subdivisions by the county surveyor, at the expense of the owner, in the manner provided in section 3634.

XXXVII.

By the provisions of subdivision 6 of section 3629 of the Political Code, the assessor must demand, in all cases, a *detailed* list of "unsecured solvent credits."

Where deduction for "debts due bona fide residents of the state" is claimed, the amount of such debts may be stated in the aggregate. The difference between the sum total of the credits and the aggregate debt is the amount to be assessed.

XXXVIII.

The assessor, in describing a mortgage must insert, in the description, the date, the original amount of the debt secured, and the amount of principal due on the first Monday of March.

Section 3678 provides that when partial payments have been made on a debt secured by mortgage or deed of trust, the owner of the mortgage is authorized to make the proper deduction, listing only the balance due on the first Monday in March.

Solvent credits must be assessed separately, and their value must not be incorporated with the value of other personal property, but the assessment must be carried separately into the column of value of personal property.

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Unlawfully acting as auctioneer-----	436
Officer charged with collection, etc., of revenue, refusing to permit inspection of his books-----	440

CONSTITUTION.

Stanford University, property exempted-----	Art. 9, Sec. 10
California School of Mechanical Arts, exempted-----	Art. 9, Sec. 11
California Academy of Sciences, exempted-----	Art. 9, Sec. 12
Cogswell Polytechnical School, exempted-----	Art. 9, Sec. 13
Veterans of wars, property exempted-----	Art. 13, Sec. 1 $\frac{1}{2}$
Church property, exempted-----	Art. 13, Sec. 1 $\frac{1}{2}$
Bonds of state, municipalities, etc., exempted-----	Art. 13, Sec. 1 $\frac{1}{2}$
Colleges exempted-----	Art. 13, Sec. 1a
Personal property, household effects, etc., exempted-----	Art. 13, Sec. 10 $\frac{1}{2}$
Fruit trees, vines, etc., exempted-----	Art. 13, Sec. 12 $\frac{3}{4}$
Shipping, exempted-----	Art. 13, Sec. 4
Other exemptions-----	Art. 13, Sec. 1
What property taxable-----	Art. 13, Sec. 1
"Property" Includes what-----	Art. 13, Sec. 1
Land and improvements to be separately assessed-----	Art. 13, Sec. 2
Cultivated and uncultivated to be assessed at same value-----	Art. 13, Sec. 2
Land must be assessed in tracts of 640 acres or less-----	Art. 13, Sec. 3
Instalment tax law-----	Art. 13, Sec. 7
Taxpayers to deliver statement to assessor-----	Art. 13, Sec. 8
Property owned on 12 m. first Monday in March, assessable-----	Art. 13, Sec. 8
State board of equalization, creation and powers of-----	Art. 13, Sec. 9
Property to be assessed in county, town, etc., where situated-----	Art. 13, Sec. 10
Railroads to be assessed by state board of equalization-----	Art. 13, Sec. 10
Personal property exemption-----	Art. 13, Sec. 10 $\frac{1}{2}$
Poll taxes and head taxes prohibited-----	Art. 13, Sec. 12
Fruit and nut-bearing trees exempted-----	Art. 13, Sec. 12 $\frac{3}{4}$
Corporations taxed for state purposes-----	Art. 13, Sec. 14

